IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 786 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ALOIS SIMON PARMAR - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR DF AMIN for Appellant(s) : 1,
MR AJ DESAI, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,
MR YN RAVANI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 16/03/2007

CAV JUDGMENT

1. The present Criminal Appeal is filed by the appellant accused convicted and sentenced for the offences punishable under sections 420, 467, 468 and 471

of the Indian Penal Code and also for the offence punishable under section 5(2) R/w Section 5(i)(d) of The Prevention of Corruption Act,1947 (hereinafter referred to as the Old Act) vide judgment dated 16.09.1988 passed by the ld. Special Judge, City Civil & Sessions Court, Ahmedabad in Special Case No.5/1987. The charge framed against the accused is at Exh.6 and when the accused has assailed the legality and validity of the judgment and order of sentence, this Court shall have to deal with all relevant aspects pointed out by the accused considering the scheme of section 374 R/w section 386 of CrPC.

2. While holding the appellant accused (hereinafter referred to as the accused) guilty for the aforesaid offences, the ld. Special Judge sentenced the accused to undergo R/I for 1 ½ Years and to pay fine of Rs.3000/, I/d to further undergo R/I for 6 months for the offence punishable under section 420 of the Indian Penal Code. The ld. Special Judge awarded similar sentence in respect of offences punishable under sections 467, 468 and 471 of Indian Penal Code. The accused is also awarded sentence to undergo R/I for 1 ½ Years and to pay a fine of Rs.3,000/, I/d to undergo further R/I for 6 months for the offence punishable under section 5(2) read with section 5(i)(d) of the Old Act. It is ordered that these substantive sentences shall run concurrently. The amount of fine has been paid and at present the accused

is on bail granted by this Court (Coram: JP Desai & NB Patel, JJ) vide order dated 27.09.1988 while admitting the appeal preferred by the accused.

3. The case of the prosecution is reflected in the charge exh.6. However, to appreciate the arguments advanced by ld. Counsel Mr. DF Amin for the accused as well as by ld. Counsel Mr. Ravani appearing for Central Bureau of Investigation (CBI for short) and ld. Addl.PP Mr. AJ Desai for the State, it would be necessary to state the case of the prosecution in brief.

(i) The accused, during the period of the offence committed, was serving as Upper Division Clerk (UDC) in Circle:III of Ward:C of Income-tax Department at Ahmedabad. That on or before 06.09.1986, as he had scope and access to take out the blank IT Refund Order Vouchers from the book containing such vouchers, had managed to take out one leaf from the blank vouchers bearing No.B/3-668395 from the Tax Refund Voucher Book No. AO-36684. As per the norms and rules, IT Department is also simultaneously preparing advise note that can be sent either to State Bank of India (SBI for short) or to Reserve Bank of India (RBI for short) as the case may be. Such Advice Book having similar number normally is being kept with voucher book and prepared at the time of issuing IT refund voucher (order). The accused was also

able to take out a page of even number form the Advice Note Book without the knowledge of Mr. Hashmukhbhai D.Parmar- Tax Assistant serving in Circle:III (Ward:A). This Mr. HD Parmar has been examined as one of the prosecution witnesses. Of course, he was shown as suspect accused in the FIR registered by the CBI. This Mr. HD Parmar was in possession of the blank refund order Voucher Book and Advice Note Book as the same were handed over to him for administrative convenience by the IT Officer of the concerned ward. IT Officer was supposed to keep the blank book with such important documents, but the same was given to Mr. HD Parmar and were being kept in a cupboard in a room where office clerks of IT Ward: “A” & “C” were sitting. It is alleged that only one cupboard was having facility of lock. Keys were kept in one of the drawers. So, the clerks working and sitting in the branch of Circle:III if need be can have access to the cupboard even in absence of the person in charge of the keys. It is the say of the prosecution that the accused managed to take out the said blank IT refund order and blank Advice Note with mala fide intention and to use the same by forging a valuable security or say converting it into a valuable security. The accused filled in the details in both these documents by his hand for the amount of Rs.10 Lakh in the name of a fictitious and non-existent person named as Jayantilal Rasiklal Vyas. No person having name of Jayantilal Rasiklal Vyas

was even an assessee during that period. It is the further case of the prosecution that the accused then put the signature of JR Vyas by his hand and also forged the signature of IT Officer Mr. BK Shah who was otherwise authorized and empowered to sign such IT Refund Order voucher and Advice. These acts were done dishonestly, fraudulently and with an intention to cause loss or damage to IT Department as well as to RBI and/or to get advantage of the forgery. It is alleged that both these documents namely blank forms of IT refund vouchers as well as Advice were valuable securities and encashable instrument like a cheque which is a negotiable instrument.

(ii) It is the say of the prosecution that in furtherance of the offence of forgery qua these two documents, the accused had approached Ellisbridge Co.Op.Bank Ltd., Ashram Road Branch, Ahmedabad (hereinafter referred to as the Bank) to obtain the said amount of Rs.10 Lakh with a view to encashing the forged IT refund voucher and opened SB Account No.3863 in the fictitious name of Mr. JR Vyas on 13.08.1986 with the help and intervention of his one of the co-employees PW Mr. RM Dave and one Mr. Chetan Patel who was serving as clerk in the said Bank. It is the say of the prosecution that the accused opened the said SB Account in the fictitious name of Mr. JR Vyas by putting a forged signature in the name of Mr. JR Vyas

on the specimen signature card and wrote a wrong address in the account opening form as well as in the specimen signature card as 3, Karnavati Society, Usmanpura, Ahmedabad. At the time of opening of the said SB Account, the accused deposited an amount of Rs.200/ in the Bank on the same day vide pay-in slip knowing fully well at that time that there is nobody like Mr. JR Vyas and even then he opened the account in the name of Mr. JR Vyas. Though the accused was knowing fully well that IT refund voucher bearing No. B/3-668395 is a forged, used it as genuine one and deposited and tendered the same on 06.09.1986 with the said Bank in his SB Account No.3863 opened by him earlier on 13.08.1986. Of course, there is no exact date or time when the accused had managed successfully to get the blank IT refund voucher and the page of advice note Book, but it is the say of the prosecution that it must have been managed any time prior to 06.09.1986.

(iii) It is the say of the prosecution that pay-in slip of deposit of Rs.200/ as well as IT refund voucher were prepared by the accused by his own hand so that he can successfully cheat and misappropriate the amount of Rs.10 Lakh causing loss of the same amount to IT department and to RBI. According to the prosecution, after depositing the IT refund voucher with the Bank, he had gone to the said Bank on 11.09.1986 to withdraw the

said amount of Rs.10 Lakh. It is alleged that the accused had obtained passbook with necessary entry, but he could not get the amount as the Manager of the said Bank was not available in his chamber and as the proposed withdrawal was of a huge cash amount and also there was one endorsement of “stop payment” made on the ledger of the account of the accused i.e. SB Account No.3863. Of course, the accused was not informed about the endorsement made by the Manager, but the ledger-keeper PW Piyush R.Vyas did not disburse the payment and the accused was asked to come again on return of the Manager in the Branch. Meanwhile, some discreet inquiry had started about the issuance of IT refund order of huge amount of Rs.10 Lakh within the IT department and so also in RBI. The Branch Manager of the said Bank had also suspected something wrong with IT refund voucher deposited with his Branch in the early hours of 11.09.1986 and, therefore, he had made endorsement “stop payment” on the ledger account of the accused. Here, it would be relevant to note that for the reasons best known to the Branch Manager of the said Bank or any responsible officer of IT Department or of RBI, they had not dared to approach the police and it appears that if possible all of them collectively were in a mood to hush up the matter as there was no substantive loss or damage caused either to the Bank or to IT Department or to RBI. It emerges from the plain reading of FIR registered by CBI that an

informant; may be a person interested in saving his skin or a honest truth lover; had intimated CBI about the commission of the offence and, therefore, FIR came to be registered by Mr. MM Patel, PI, CBI on 19.09.1986 and the case was registered as RC No.33/1986 (Exh.76). CBI was able to unearth the crime. As the accused was a public servant, his conduct of making an attempt to defraud his own department and in turn to defraud the RBI by misappropriating the amount, according to the prosecution, was a criminal misconduct punishable under section 5(i)(d) R/w 5(2) of the Old Act.

(iv) CBI recorded statements of number of witnesses, searched the house of the accused and after obtaining opinion from the handwriting expert as well as details from the witnesses who have been examined by the Investigating Officer, linked the accused with the crime and chargesheeted him for the above-said offences. It is not relevant at this stage to comment on the aspect whether CBI could have linked any other person with the present accused by adding the charge of criminal conspiracy punishable under section 120-B of IPC or by adding the charge of the offence punishable under section 34 of IPC because this aspect would be more relevant while dealing with the submissions made by ld. Counsel Mr. Amin appearing for the accused. However, it is important to note at this stage that RC No.33/1986 was

registered against the present accused as well as against one Mr. BK Shah, IT Officer and Mr. HD Parmar as they were the persons who were in actual possession and control of the original IT Refund Voucher Book and IT Advice Book and series in question. However, as a result of investigation, CBI submitted chargesheet on 16.09.1987 against the present accused only. There was no formal arrest either of Mr. BK Shah or of Mr. HD Parmar and they have been sited as witnesses and examined during the course of trial. In the present case, no formal report has been submitted to the Court under section 169 of CrPC or under any other provisions in reference to other two accused persons who were named in the complaint i.e. Mr. BK Shah and Mr. HD Parmar.

(v) For the sake of brevity and convenience, the following facts/events with relevant dates may be mentioned:

Date	**Particulars**
06.09.1986	Mr. RM Dave introduced the accused to PW Mr. Chetan J.Patel and asked PW Chetan Patel to help the accused in opening the S/B Account in his Branch. On that day, with the help and assistance of Chetan Patel, the accused opened S/B Account in the said bank i.e. Ellisbridge Co.Op.Bank Ltd., Ashram Road Branch, Ahmedabad.
06.09.1986	Forged IT Refund Voucher for Rs.10 Lakh was tendered for clearance

with the Bank. This voucher was required to be sent to SBI, but it was erroneously sent by the said Bank to SBI and, therefore, SBI returned the said voucher to Ellisbridge Co.Op. Bank.

09.09.1986 On depositing the IT Refund Voucher, the account holder (accused) was given credit of Rs.10 Lakh on 08.09.1986, but as the voucher had returned uncleared sent by SBI, the amount of Rs.10 Lakh was debited again in the Ledger Account on 09.09.1986 and on that day, IT Refund Voucher was sent for clearance to RBI.

10.09.1986 As IT Refund Order was cleared by RBI, again a credit entry of Rs.10 Lakh was entered into the Ledger Account No.3863 which was in the name of Mr. Jayantibhai Rasiklal Vyas.

10.09.1986 Branch Manager of the said Bank namely Mr. Lakhani came to know about the credit of the amount of Rs.10 Lakh in the account of Mr. JRVyas.

11.09.1986 Mr. Lakhani inquired in the early morning at about 8.00 A.M. paying personal visit to 3, Karnavati Society, Usmanpura about Mr. Jayantilal Rasiklal Vyas and came to know that no person of this name is residing at Bungalow No.3 of Karnavati Society. So, he rushed to the Bank bit early at about 10.00 A.M. And according to this witness Mr. Lakhani, he had put an endorsement of “stop payment” in the ledger account of said Mr. JR Vyas. He thereafter asked the ledger-keeper to find out whether he had introduced Mr. JR Vyas for the purpose of opening of S/B Account and on discreet inquiry, he was able to find out that one another clerk namely PW Mr. Chetan J.Patel had brought the person who had opened the said account. On

	that very day, the accused had gone to the Bank at about 12.30 A.M. And had demanded passbook of his S/B Account No.3863 and the passbook after putting relevant entries therein, was prepared and given to the accused. The accused had also asked for withdrawal of the amount, but he was asked to come on the next day by PW Mr. Piyush Vyas. as the withdrawal was of a huge cash amount.
11.09.1986	Deputy Director of Vigilance of IT Department informed about the fraud to one Mr. C.Shivdasan and asked him to inquire. Mr. C.Shivdasan made inquiry with Ellisbridge Co.Op.Bank on telephone through its Manager Mr. Lakhani and he also collected the original Refund Voucher Book and Advice Note Book from the cupboard of Mr. HD Parmar.
12.09.1986	Mr. C.Shivdasan went to RBI. Thereafter Mr. C.Shivdasan went to Ellisbridge Co.Op.Bank and collected relevant documents (exh.33, 34, 35 etc. from the Bank and served prohibitory order.
19.09.1986	PI Mr. MM Patel received information about the offence of forgery and attempt made to cheat the IT Department as well as RBI and after some discreet inquiry, registered FIR (exh.78) and seized about 9 articles by preparing seizure memo report from Mr. C.Shivdasan.
21/22.09.86	The documents collected by IT Department from Ellisbridge Co.Op.Bank, Ashram Road Branch, were handed over to CBI.
23.09.1986	The house of the accused was searched and some articles were seized including one Passport Size photograph of the accused.
25.09.1986	PI Mr. MM Patel went to RBI,

	Ahmedabad and original Refund Order and two copies of Advice Note received by RBI, were recovered.
31.08.1987	IT Commissioner (Administration), gave approval and authorization to accord sanction to prosecute the accused.
01.09.1987	Inspecting Asstt. Commissioner, AR-III, accorded sanction to prosecute the accused.

4. To prove the case, the prosecution has examined 19 witnesses and as submitted by ld. Counsel appearing for the appellant Mr. Amin, ld. Counsel Mr. Ravani appearing for CBI, these witnesses can be divided into different sets and categories and their evidence should be appreciated individually and in reference to to the evidence led by other witnesses examined in that very set and thereafter ultimate evidence led by the prosecution needs detailed appreciation in its totality. The first set of evidence is of the witnesses namely the witnesses examined from Income-tax Department & RBI. The second set of evidence is of the witnesses namely of Co.Op.Bank and the third set of evidence is of other witnesses i.e. panchas, handwriting experts and investigating officer.

5. Mr. Amin has taken me through the oral as well as documentary evidence led and so also the relevant part of the judgment under challenge. The different set of facets of the evidence pointed out to the Court during

the oral submission by Mr. DF Amin for the appellant and Mr. YN Ravani for CBI, divides the witnesses in different sets. The first set of evidence is of the person-witnesses serving with Income-tax Department. The second set of the witnesses are the witnesses examined who were either the employees or the persons concerned with the opening of SB Account with the Bank. The third set of witnesses is of bit complex nature consisting of witnesses belonging to RBI, handwriting expert, panchas of panchanama drawn while obtaining specimen handwriting of the accused, panchas of seizure memo prepared by Investigating Officer, Indravadan G. Patel, Secretary of Karnavati Society and Investigating Officer. The prosecution has also placed reliance on the evidence of PW 14 Pramodkumar -Inspecting Asstt. Commissioner Exh.60 who had proved the sanction accorded to prosecute the accused under PCA Act and also the evidence of Investigating Officer.

6. The oral evidence of PW.1 Abdullakhan A.Pathan Exh.29, PW.2 Hashmukh.D.Parmar Exh.38, PW.3 Mukesh R. Jambusaria Exh.40, is of the persons who have clearly deposed against the accused and have identified the handwriting of the accused as person acquainted with the handwriting of the accused mainly on the forged documents tendered in evidence as special documents. These witnesses have also proved where and how the

original blank Income-tax Refund Voucher Book and Advice Note Book were being kept in one of the cupboards where these witnesses were sitting in a room of the Income-tax Office. Evidence of PW.9 Mr. BK Shah exh.48, once suspect and then examined as witness like Mr. HD Parmar, would also fall in the similar category because this witness has proved the signature on the forged Income-tax Refund Voucher of Rs.10 Lakh and on relevant advice, deposing that the said signature is not of his signature and those documents do not bear his signature by leading negative evidence with the evidence of PW.12 ITO Shri Shivdasan Exh.55 serving with the Head Quarter and of one Mr. CV Menon PW.16 Exh.65 respectively.

7. So far as second set of witnesses are concerned, they are PW.4 Chetan J.Patel Exh.41, Savings Bank Account clerk & SB Account Ledger Keeper of the Bank, PW.5 Piyush R.Vyas Exh.42, PW.6 Natvarlal C.Patel Exh.43 who opened the account accepting the account opening form and specimen signature card tendered to him, and PW.7 Narendra M.Lakhani Exh.44- Branch Manager of the said Bank. These witnesses have proved the documents recovered from the Bank concerning the opening of SB Account with the said Bank. Certain documents tendered in evidence by the prosecution has been admitted by the accused or they have been considered as undisputed documents. The ld. Trial Judge has evaluated all the dispute documents

along with the questioned documents examined by the handwriting expert i.e. PW.18 Suresh N.Lohiya Exh.71. One set of documents produced and tendered in evidence by the prosecution shows that Rs.200/ deposited by the accused probably was withdrawn from one another SB Account of the accused which the accused was holding with Canara Bank. Opinion expressed by the handwriting expert, search warrant, seizure memo, photograph of the accused, are there on record and their genuineness has not been assailed. Of course, relevance and evidentiary value has been put to stake by the defence side. The plain reading of the evidence of the witnesses examined from the Income-tax Department, Reserve Bank of India as well as of the witnesses from the Bank, has created an impression that they were not serious or otherwise sincere to see that the truth is unearthed as early as possible, perhaps because forgery and criminal wrong was detected much earlier before it would become too late. But according to me, such approach even if condemnable, would not go to the root of the strength of the case placed by the prosecution before the trial Court.

8. According to Mr. Amin, blank IT Refund vouchers taken out from the book by itself would not be a valuable security and the advice that are being sent to SBI or RBI for administrative reasons and smooth encashment of the refund vouchers issued by the Income-tax Department, also

would not be equated with the valuable security within the meaning of Indian Penal Code. The ld. Trial Judge has not considered all these crucial and legal aspects. There is no convincing evidence to prove that the accused had posed himself as JR Vyas and had presented any of the forged document with the Bank for any purpose or for the purpose of opening SB Account with the Bank. It is clear from the circumstances emerging from the evidence that Investigating Officer has implicated the accused by introducing the accused through photograph taken away by him during the search of the house only with a view to save one Chetan Patel who was a party and responsible for a fictitious account opened with the Bank and also to save Mr. RM Dave and Mr. HD Parmar- real offenders and the master mind behind the crime. The Investigating Officer ought to have chargesheeted Mr. Dave, Mr. Parmar and Mr. Chetan Patel by applying section 120-B of the Indian Penal code especially when there was no convincing evidence of a direct nature against the accused except the evidence of above three persons i.e. Mr. Dave, Mr. Parmar and Mr. Chetan Patel. The Investigating Officer has not even cared to submit a report that why Mr. BK Shah and Mr. HD Parmar have not been chargesheeted. At least, the ld. Trial Judge, on availability of evidence, ought to have joined them as an accused in exercise of the powers vested with the Court under section 319 of CrPC in the fact finding mission. There is no evidence

even of any bank employee which can be said to be of cogent nature that the accused had attempted to withdraw the amount of Rs.10 Lakh credited on 10.09.1986 at about 12.00 to 12.30 hours on 11.09.1986 otherwise it was possible for the Investigating Officer to recover the original passbook issued by the Bank to the accused and Bank Officer would not have permitted the accused to go out of the bank premises. Mr. Lakhani and Ledger Clerk Mr. Vyas were suspecting a fraud. Even the police in advance could have been called anticipating the arrival of the real culprit because in the morning of 11.09.1986, Branch Manager Mr. Lakhani had satisfied himself that some wrong has been committed and there is nobody like Mr. JR Vyas residing at 3, Karnavati Society, Usmanpura, Ahmedabad and the account is fictitious. No responsible person even had identified the account opener Mr. JR Vyas.

9. One of the arguments of Mr. Amin is that the evidence as to the identification of the handwriting of the accused on the forged documents exh.30 to 34, is of interested witnesses and the same ought not to have been accepted as reliable piece of evidence because all of them i.e. Mr. Parmar, Mr. Dave and Mr. Chetan Patel were highly interested in keeping themselves away from the scenario of commission of offence. Handwriting expert has not expressed any positive opinion qua certain

crucial documents. Ld. Trial Judge himself by exceeding the jurisdiction vested with the Court under section 73 of the Evidence Act, has compared the handwriting by putting him in the chair of an expert and that too by overruling the opinion of the handwriting expert PW.18 Mr. Suresh.N.Lohiya Exh.71.

10. It is argued that Mr. HD Parmar was was undisputedly in charge of the Income-tax refund voucher book and he was enjoying control over the refund order book as well as advice book vice Income-tax Officer Mr. BK Shah at the instance of Mr. BK Shah. It is the say of the prosecution that this practice is being followed for administrative convenience and, therefore, this two books containing valuable blank sheets were given to Mr. HD Parmar. Mr. HD Parmar was holding refund order book and advice book qua Ward No.A of Income-tax Circle:III and the accused was serving in the same Circle:III, but was under Income-tax Officer, Ward No.C. The accused had no reason to touch the papers of other ward. Evidence led by the prosecution simply suggests that the accused has a scope to have access to the cupboard where Income-tax refund voucher book and advice book of Ward:A were only kept, but such access was available to all other seven persons sitting in the said room and the accused only has been made a scape-goat. It may be Mr. RM Dave or Mr. HD Parmar because both these persons also had equal access

to that cupboard and scope to play with the documents that have been tendered during the course of the trial. Mr. HD Parmar has proved the questioned documents Q.1, 11, 4 to 6 and also proved question documents Q.7 to 9, but this very witness has not been corroborated fully by the handwriting expert. In this contingency, his version or evidence ought not to have been accepted as reliable piece of evidence. Of course, there are undisputed handwritings of the accused that are available on record vide exh.36 & 37, but there is no evidence which can link the handwriting of all the questioned documents with undisputed handwriting of the accused on exh.36 & 37. None of the prosecution witnesses including Mr. HD Parmar has convincingly proved that they had seen the accused writing in vernacular Gujarati. How Mr. Parmar could prove Gujarati handwriting of the accused as he had not developed any acquaintance with Gujarati Handwriting of the accused ? Opportunity to have a look occasionally at some handwriting by itself can not be equated with the word “acquaintance” used in number of judgments of this Court and the Apex court and the scheme of section 45 of the Evidence Act. None of the prosecution witnesses including Mr. HD Parmar were familiar with Gujarati handwriting of the accused. At the most, they can identify the signature of the accused being a co-employee, but it would be difficult for this witness to opine qua the handwriting of the accused if the signature

is made of some fictitious person. Only an expert eye can opine and as per the settled legal position, opinion evidence is a weak piece of evidence. When there was limited scope to have handwriting of the accused as the accused was simply writing the figures in the relevant documents of the department, Mr. HD Parmar or any co-accused could not have identified the handwriting on the forged documents. Investigating Officer has not prepared map of the room where the accused along with other co-employees were sitting otherwise the distance between the tables of the witnesses examined and the table of the accused would have been considered. The ld. Trial Judge ought not to have accepted that the prosecution witnesses must have seen the accused writing regularly and they can be said to be the persons acquainted with the handwriting of the accused. Unless the circumstances are exceptional or compelling, normally the handwriting on the Income-tax Refund vouchers would be of the employee serving in the same ward. Investigating Officer has not even cared to find out as to how many refund orders were issued that were in the handwriting of the employees of that very concerned Ward and in this fact situation. The handwriting of Mr. HD Parmar was sent for examination and comparison through the government examiner- expert has not given any negative opinion qua the handwritings and the questioned documents. In the same way, the handwriting of Mr. RM Dave also ought to have been

closely examined and compared by the expert to rule out the shadow of doubt, otherwise positive evidence like opinion in case of handwritings of Mr. BK Shah could have been produced. One signature allegedly of the person who introduced the accused as Mr. JR Vyas to the Bank at the time of opening of SB Account, was not sent or referred for analysis and opinion by the handwriting expert which shows important infirmity in fairness of the investigating agency. There is no evidence of convincing nature as to who put that signature and when. Either it may be by the accused himself or by anybody who may be present within the premises of the Bank as it is clear from the evidence of PW Chetanbhai Patel that each details were written in the account opening form within the Bank premises and he had even seen the accused writing such details, then why no opinion was sought for qua the signature of introducer is also a question. The specimen writing of PW Chetan Patel or each concerned employee of the Bank dealing with SB Account may have thrown some light on this aspect. As no opinion was sought by the Investigating Officer qua the handwriting of the signature in the column of “introducer”, there is no evidence of convincing nature as to that signature concerned. Such opinion may have resulted into the finding that (i) about handwriting and (ii) about material (instrument) used in putting that signature and other details of that very account opening form so far as

its characteristic is concerned. Such material might have supported PW Chetan Patel and other witnesses examined to prove the handwriting or may have falsified their say. So, the lacuna left by the investigating agency appears to be deliberate and has resulted into serious prejudice to the accused. In the same way, the material conflict in the evidence of PW 3 Mukesh Jambusaria brought on record during the course of cross-examination has been ignored by the ld. Trial Judge, is the grievance of ld. Counsel Mr. Amin for the accused. This witness was not at all confident and/or clear from the beginning about his acquaintance with the handwriting of the accused. Two statements of this witness were recorded and that too after the unreasonable gap of about 1 ½ months. This witness was shown documents exh.30 to 32 and has identified the handwriting on the documents as that of accused in his examination-in-chief. He has denied the suggestion that he can not identify the handwriting of the accused in English. His attention was drawn to his previous statement wherein this witness has admitted that in his previous statement he has stated that he can not exactly say whether handwriting on refund voucher No.B/3 668395 and advice note of very number are in the handwriting of the accused Mr. Parmar or not. The excuse placed by this witness, according to Mr. Amin, is lame and unconvincing. Merely because this witness was in hurry on account of illness of his father would not have

any bearing on the correctness of the statement made by him because this witness was shown these two important documents. This witness has admitted that when his statement was being recorded by the CBI officer, he had not disclosed that his father is sick nor he had informed the administrative officer of his department that it would not be possible for him to go before the CBI officer for giving his statement. Of course, this witness has claimed that he had requested CBI Officer that he may not record his statement and he may be asked to come down on any other day, but the CBI Officer had replied that he would ask few questions to him and thereafter he (this witness) would be called again. First Statement of this witness Mr. Jambusaria was recorded between 5.30 & 5.50 P.M.. The officer who had recorded first statement of this witness has not corroborated the version of this witness in this regard. It is submitted by Mr. Amin that this material contradiction that has come on record on account of admission made by this witness about the facts stated by him in his previous statement, ld. Trial Judge ought not to have considered the evidence of PW 3 at all as favourable piece of evidence. Such evidence can not be used safely as substantive piece of evidence or corroborative piece of evidence. It is true that considering the place of sitting of the accused in the office room and the fact that they are serving in the same circle of the Income-tax Department and they had

worked for quite some time and Mr. Jambusaria was not a new entry in the department in the recent past, he was competent to depose about the handwriting of the accused, but when this very competent witness has created a confusion, no reliance can be placed on the evidence of this witness.

11. When it has come on record that the mother of the accused had expired on 09.09.1986 i.e. after the date of deposit of the Income-tax Refund voucher with the Bank and on 11.09.1986 -the day on which the accused has allegedly made attempt to withdraw the amount paying visit to the Bank in the afternoon between 12.00 & 12.30 P.M, then his absence from the office should not be used as a circumstance against the accused because more than one witness has accepted this fact. So, whether a person under the mourning and shock would venture to go to the Bank for inquiry on 11.09.1986 is also a question. So, the allegation of the prosecution about the activities undertaken by the accused after 09.09.1986 i.e. the date of the date of his father and on 11.09.1986 when he was asked to come down for the payment on the next date appears to be improbable. The conduct of PW Piyush Vyas is also found highly improbable and it is clear that he suppressed some aspect as to the presence of the Manager in the Branch on 11.09.1986, his own arrival in the branch for regular job on that day and the endorsement

regularly made by the Branch Manager Mr. Lakhani on the ledger of the concerned SB Account opened in the name of Mr. JR Vyas. This witness has not stated in his examination-in-chief that while preparing passbook and handing over the same to the accused, he was aware about the endorsement. If endorsement was really there in the early hours on the ledger account, then whether he would have entered the credit entry of Rs.10 Lakh in the passbook of the accused and handed over the same to the accused, is a crucial question which has not been satisfactorily replied either by this witness or by any of the prosecution witnesses including Mr. Lakhani-Manager of the Bank. This witness Mr. Piyush Vyas claims that on 11.09.1986, at about 10.30 A.M., he was called by his Branch Manager Mr. Lakhani and he was informed that no payment should be cleared from the SB Account No.3863 and he had made endorsement on the ledger. Handwriting of the endorsement made on the original ledger has been identified by this witness as that of Mr. Lakhani. When this witness was knowing the handwriting of Mr. Lakhani and he was orally instructed not to disburse any payment, then any responsible clerk would never hand over the passbook thereafter with relevant entry of credit of Rs.10 Lakh at about 12.30 P.M. on that very day. PW Mr. Lakhani claims that he had rushed to the Bank on 11.09.1986 early at about 10.00 A.M. And had made endorsement of “stop payment” in that account. It is not

the say of Manager Mr. Lakhani that he had called Mr. Piyush Vyas in his chamber with ledger book or he had gone to SB Account Counter personally where Mr. Piyush Vyas was sitting and he had made endorsement there at about 10.30 A.M. On the contrary, according to Mr. Lakhani, he had called Mr. Vyas and other clerk for the purpose of making discreet inquiry as to who is the person who had introduced Mr. JR Vyas at the time of opening of SB Account on 13.08.1986. Nothing has been said by Mr. Piyush Vyas in his examination-in-chief about the facts stated in this regard by Mr. Lakhani. So, according to Mr. Amin, there is clear conflict in the evidence as to the date and time of putting endorsement by the Branch Manager Mr. Lakhani and that too without putting his initial below the endorsement. On the contrary, the plain reading of the evidence of Mr. Piyush Vyas and Mr. Lakhani-Manager of the Bank vis-a-vis the evidence of one of the officers of the Income-tax Department, gives an impression that Mr. Lakhani pretends to be the first person in tracing out the probability of the fraud. There was no reason for Mr. Lakhani to pay visit to Bungalow No.3 of Karnavati Society because clearing of any instrument of high amount by itself would not give any cause to the Branch Manager to pay visit at the residence of the person in whose favour the Bank has received such a huge payment. So, while evaluating the evidence as to the handwriting of

the accused on the documents Exh.30 to 32, the ld. Trial Judge ought not to have sought any corroboration from the alleged conduct of the accused between 09.09.1986 and 11.09.1986.

12. PW 9 Mr. BK Shah has not identified the handwriting on these three documents. Initially, this witness was named as an accused while recording his statement about missing vouchers. On 15.09.1986, a written explanation was sought from him, but he had not responded to the same till 17.09.1986, but while recording the statement of this witness, CBI officer had not shown the documents Exh.30 to 32 to him, is the say of Mr. Shah. He has tried to justify his action of handing over the blank IT Refund voucher Books and Advice Books to his subordinate Mr. Parmar. Of course, this witness has denied that entire fraud has been played by Mr. Dave and Mr. Parmar. Integrity and trustworthiness of this witness has been challenged by the defence side by placing a judgment delivered in a Civil Case being Civil Suit No.749/1997 rendered by ld. City Civil Judge, Ahmedabad. It is pointed out by Mr. Amin that in that civil litigation, Mr. Shah was not believed by the Court. A person who was not even found reliable in a family litigation by the competent court, whether should be trusted, is also a question and the same has not been considered by the trial Court. This witness has denied

that original Income-tax Refund Voucher and Advice sent to RBI do not bear his signature, was not required to be accepted either by the investigating agency or by the Court. There was no reason to exonerate him fully by the investigating agency. It appears that Mr. BK Shah has been cited as a witness only with a view to make the present accused scape-goat otherwise total four persons should have faced the music of prosecution for commission of the offence viz. Mr. BK Shah, Mr. HD Parmar, Mr. RM Dave and the present accused along with one bank employee namely Mr. Chetan Patel. To minimize number of accused persons and especially with a view to help Mr. Chetan Patel and Mr. RM Dave, pick and choose theory has been adopted by CBI officers and in this background of facts, the version of Mr. BK Shah ought not to have been relied upon by the trial Court whereby he had denied that exh.30 to 32 do not bear his signature and his signature is forged. Of course, the handwriting expert opinion corroborates his version, but looking to the conduct of this witness and the fact that once he has been found unreliable by the competent Court, the ld. Trial Judge ought not to have given weightage to the opinion evidence because as per the settled legal position, opinion evidence after all is a weak piece of evidence.

13. The investigating agency when had not seized any passbook from the accused nor any undisputed vernacular Gujarati writing of the accused was seized so as to send

such writing to the Government Examiner on Questioned Documents, the accused ought not to have been linked with the crime on the evidence of interested witnesses -persons who might have implicated the accused to save their skin and/or on evidence of so-called identification of the handwriting. In the same way, the investigating agency has not even cared to trace the person who identified Mr. JR Vyas to the Bank for opening SB Account. It was not impossible to trace out. At least, reasonable efforts ought to have been made. So, in absence of such efforts, the accused can legitimately say that the investigating agency had adopted pick and choose policy and ultimately the chargesheeted the accused though there was no adequate evidence against him. On mere suspicion, the investigating agency may submit final report, but the Court at least ought not to have linked the accused with the crime on such inadequate and stray piece of evidence. A suspicion can not take place of proof. The back-bone of the arguments of Mr. Amin is that when the case against the accused is solely based on satisfactory evidence, the prosecution was supposed to establish each circumstance against the accused by cogent and legal admissible evidence. After leading such evidence circumstance-wise, the prosecution was again under obligation to establish the link between such circumstances to complete the chain. The ld. Trial Judge has not satisfactorily concluded with reasons that why

each circumstance is held proved and in what manner this circumstance can be said to have been linked with each other which can be said to be a completion of chain. It is argued that the ld. Trial Judge ought to have posed a question that the prosecution witnesses examined during the course of trial other than Mr. RM Dave whether could have said that handwritings are of Mr. RM Dave or they looked like the handwritings of Mr. RM Dave and the accused also would have given some information during interrogation whether Mr. RM Dave could have been chargesheeted because the final report submitted mainly based on the oral statement of the co-employee.

14. One more infirmity in the case of the prosecution is that CBI ought to have arrested the accused immediately when he was found suspect and Test Identification Parade (TI Parade) ought to have been carried out before the Executive Magistrate to link the accused with the person who had opened the fake SB Account on fictitious name of Mr. JR Vyas. When it is the say of the Bank witnesses examined that they are able to identify the person who had visited the bank for the purpose of opening the SB Account or even inquiring as to the account and even for obtaining passbook, then TI Parade exercise was required to be carried out by the investigating agency. It is true that some identification or clue as to identification can be received by the investigating agency with the help of

the photograph, but here in the present case, the investigating agency while carrying out the search of the house of the accused, had taken away the photograph of the accused. The photograph of the accused was not at all an incriminating document. This photograph was shown to all the bank witnesses and but for the photograph, they could not have identified the accused in the Court for the first time as a person who had posed himself to be Mr. JR Vyas for the purpose of getting the Bank Account opened. In such a situation, the identification of the accused in the Court for the first time could not have been given any weightage by the ld. Trial Judge. So, according to Mr. Amin, the finding of the ld. Trial Judge is based mainly on conjecture and a strong suspicion emerging from the evidence is accepted as a proof contrary to the accepted principles of our criminal jurisprudence.

15. Mr. Ravani, ld. Counsel appearing for the CBI, while justifying the finding recorded by the ld. Trial Court, has concentrated his arguments on two sets of evidence i.e. evidence of co-employees sitting in the same room where the accused was sitting and working and the evidence of the Bank employees. He has placed some reliance on the evidence of seizure memo and evidence of witnesses in whose presence the specimen handwritings of the accused were collected. According to Mr. Ravani, the

ld. Trial Judge has discussed in detail about the circumstances against the accused and the very strength in the evidence as to identity of the accused and while evaluating this part of the evidence, the ld. Trial Judge has not committed any error of law or facts if the evidence of relevant witnesses read in this regard. It is further submitted that the conduct of the accused is also a circumstance and that has been considered by the ld. Trial Judge. If the conduct of the accused is favourable to the prosecution or runs contrary to the presumption of innocence, then it can be used as evidence for drawing reasonable link inference and such inference can not be said to be either conjecture or surmises. Of course, in the present case, the mother of the accused had expired on 09.09.1986. It is not a matter of dispute that the accused was on leave and may be on leave on account of the death of his mother. The accused might not have anticipated the death of his mother in the month of September,1986 i.e. on 09.09.1986. So, the exercise to defraud the government had already begun much prior to that date and, therefore, the fake SB Account in the name of Mr. JR Vyas was opened by the accused. This is not a case of identity of the accused in the Court for the first time by the prosecution witnesses who are the bank employees because the prosecution has linked the identity of the accused with the crime through the handwritings proved. When crucial documents seized

from the Bank are found in the handwriting of the accused, then whether the version of the bank witnesses identifying the accused in the Court as a person who has posed to be a person as Mr. JR Vyas can be said to have some support, was the question and the ld. Trial Judge has considered the totality of the evidence in this regard. When the accused himself in his further statement recorded under section 313 of CrPC has admitted that his handwritings can be identified by PW Mr. AA Pathan, then the ld. Trial Judge obviously can place reliance on the evidence led as to identity of the handwritings in English of the accused in all the questioned documents. Admission of the accused qua some part of the evidence of prosecution witnesses was need to be appreciated and according to Mr. Ravani, the findings recorded by the ld. Trial Judge can not be said to be the findings on conjecture.

16. The trial Court has committed grave error in relying upon the evidence of the witnesses of the Bank on the point that they can identify the person who had posed himself as Mr. JR Vyas and, therefore, their version of identifying the accused as Mr. JR Vyas, ought not to have been accepted. In the same way, in view of the limitations found in the opinion expressed by the handwriting expert, the ld. Trial Court ought to have held that it is not possible to link the accused with the

crime on account of so-called similarity in the handwritings found on the questioned documents vis-a-vis the specimen handwritings and undisputed handwritings of the accused. When accused was asked to copy out the questioned documents and was asked to put a dot on the letter “J”, the specimen writing should not be considered as genuine. Sample specimen writing of the accused and comparison of such specimen writing and that too qua certain letters mentioned in the reasons assigned by the Expert, would not help the prosecution. So, the attempt made by the trial Court to link the accused with the crime on the reasons assigned by the handwriting expert should be ignored and this Court should observe that there is no link between the alleged circumstances and accused deserves at least benefit of doubt, is the submission of Mr. Amin, which according to Mr. Ravani, requires rejection.

17. Mr. Ravani has fairly conceded that opinion evidence and that too by a Handwriting Expert by itself is not a strong piece of evidence, but such opinion evidence can provide a strong support to the case of the prosecution and oral version of the witnesses examined for the purpose to prove the handwritings of the accused, the ld. Trial Judge has rightly observed that the oral version of the witnesses who have identified the handwritings of the accused on questioned documents, gets support from the

opinion evidence of PW SN Lohia, Handwriting Expert.

18. According to Mr. Ravani, while obtaining the specimen writing, various methods can be adopted by the investigating agency. While keeping the questioned document on hand, the Investigating Officer may give a dictation where use of the letters used maximum time in the questioned document, would come in the script of dictation. Simultaneously or alternatively, the accused can be asked to copy out the writing of the questioned documents repeatedly viz. say 5 to 7 times. Merely because the accused is being asked to copy out the questioned documents, should not be interpreted that the accused was supposed to give similar curves, poses, look or modes while copying out the documents, but while giving specimen writing in the presence of panch witness if the accused deliberately intends to avoid some part of the writing viz. if he avoids to put full-stop or coma or space in between, then the Investigating Officer can draw the attention of the accused that specimen writing is not the copy in true sense. There is nothing on record to show whereby it can be inferred that by obtaining specimen writing from the accused, the accused was not provided free and stress-less atmosphere or adequate support for writing an instrument. Obtaining a specimen writing is a mechanical exercise and handwriting expert mainly concentrates while examining the questioned

document with undisputed or specimen writing on various aspects need to be considered as per the science applied while examining the questioned documents and there is no scope in the present case to ignore the expert opinion which directly links the accused with the crucial questioned documents including the writing recovered from the Bank as well as the forged Income-tax Refund Voucher. By reading evidence of co-employees of the accused, it is submitted by Mr. Ravani that these persons had the maximum opportunity to become conversant with the writings of the accused and certain admissions as discussed earlier made by the accused make the evidence of co-employees more reliable so far as their competence to identify the handwritings of the accused is concerned. Only one witness qua the accused had made an admission i.e. PW Mr. AA Pathan and if it is believed, then the accused can safely be linked with the crime, but in the present case, witnesses examined from the Income-tax Department i.e. co-employees who were sitting in the same room in which the accused was sitting should be believed and the ld. Trial Judge has rightly believed them. The evidence of these witnesses gets corroboration directly from the opinion expressed by the handwriting expert. Mr. HD Parmar, though was shown as suspect in the FIR as a person in-charge of the blank IT Refund Voucher Books, but on investigation CBI found that he is not the accused but a victim in true sense and so he was not

chargesheeted. This witness has proved that the signatures found on questioned IT Refund voucher and Advice are not genuine. PW Mr. BK Shah has also stated that the signatures on both these documents are not his genuine signatures. For the sake of arguments it is accepted that he was responsible as per the norms to keep both the books i.e. IT Refund Voucher Book and IT Advice Book in safe custody, even then it was not possible for the trial Court to infer from the evidence that Mr. BK Shah may be the person responsible in forging the documents. Satisfactory explanation is coming forth from the evidence of Mr. BK Shah as well as Mr. HD Parmar. It was not even possible for the trial Court to infer that Mr. HD Parmar and Mr. BK Shah with the help of a third unknown person may have attempted to defraud the department and the RBI as both these persons were responsible and directly concerned qua the both the Books. Ultimately any fraud detected would make them responsible at least for departmental proceedings. The Court can not ignore one aspect that at the end of departmental inquiry, both these persons or any one of them could have been fastened with a liability to make the financial loss god to the government. Of course, this part is not discussed by the ld. Trial Judge, but while appreciating oral evidence of Mr. HD Parmar and Mr. BK Shah, the Court should consider the approach of CBI while chargesheeting the accused and criticism made by the

accused qua the fairness of the CIB need to be ignored. CBI could not have ignored the opinion expressed by the handwriting expert who had specifically opined that the signature on both these questioned documents are not of Mr. BK Shah- once the suspect.

19. It is amply established by the evidence of PW -3 Jambusaria (page-265 para-2 of the paper-book) that number of files having handwriting of the accused was moved and coming to this witness Mr. Jambusaria. This witness has said that he is conversant with the handwritings of the accused, he had seen him writing in English as well as in vernacular Gujarati and files were coming to him from the accused and he was receiving about 15 to 20 files per day. It is true that these files may not have a lengthy writing. Some times, there may be few letters or figures. But to become conversant with the writing, one is not supposed to read lengthy writing of that person frequently or acquittance must be of very long period.

20(i) Four persons examined from the Bank who have identified the accused who had posed himself as Mr. JR Vyas, have been rightly believed. PW Chetan Patel is the person to whom the accused was introduced by Mr. RM Dave and he himself had assisted the accused in opening the account. So, there was no reason for the trial Court to

discard the evidence of PW Chetan Patel on the ground of competence. It is true that he may be a party in introducing the accused as Mr. JR Vyas. He might have acted in a negligent manner, but that by itself would not exonerate the accused from his conduct. Mr. Ravani has drawn attention of the Court qua the sequence of conversation that has taken place between PW 4 Chetan Patel and Mr. RM Dave as well as between this witness and the accused. It is not the say of this witness that he had simply glimpses of the accused, but he claims to have communication and that too on personal level with the accused. So, PW 4 Chetan Patel can not be equated with a chance witness so far as the principles of appreciation of evidence is concerned. In the same way, PW -5 Piyush (page 293) has also stated that on 11.09.1986, one person had come in the Bank and to him at counter and had demanded passbook of SB Account No.3863 and he can identify that person and thereafter he has identified the accused as that person who had approached him in the Bank. So, this witness had an opportunity to see the accused on more than one occasion because this witness is Saving Accounts clerk. The accused had met PW 5 Piyush on two occasion; firstly on 13.08.1986 when the accused had opened and Rs.200/ were deposited in the account opened and thereafter on 11.09.1986 when accused again visited the Bank and met this witness. In the presence of the accused, this witness had prepared the paper-book with

all relevant entries and it was handed over to him. There was communication between PW 5 Piyush and the accused because the accused had expressed his wish for withdrawal of the amount credited on 10.09.1986. It is true that this witness was shown as accused along with other Bank employees in the FIR lodged by the General Manager Mr. Lakhani on 30.05.1988. The offence registered against this witness was for the offences punishable under sections 420, 408, 477-A etc. of Indian Penal Code, but it is stated by this witness that the Bank has not suspended him. The Court can not even ignore the date of registration of the offence i.e. 30.05.1988 i.e. after about 21 to 22 months. This witness was not shown even as suspect in the complaint concerned in this case. On the contrary, the conduct of this witness that has come on record clearly shows that he had not disbursed the payment of huge amount of Rs.10 Lakh or any part thereof for one reason or the other. In the same way, PW Natvarbhai Patel (PW-6 Exh.43) also had an opportunity to have some conversation with the accused who had introduced himself as Mr. JR Vyas. He had assured Asstt. Manager Mr. Natvarbhai Patel that he shall bring the details of account number etc. at the earliest of the person who had introduced him for opening the account in the Bank and had put his signature as “introducer”. According to PW 6 Natvarbhai, he would not have opened the account, but on the assurance given by the accused

and also by a person working in the Bank namely Mr. Chetan Patel, he had opened the account. The accused was told that on receipt of details of the account number etc. of the person introducer, the account of the accused will be opened. However, the account was opened. However, on this count, it was not proper for the trial Court to observe that Mr. Chetan Patel and Mr. Natvarbhai examined by the prosecution as witnesses may be the co-conspirator and could have been prosecuted for the offence punishable under section 120-B R/w other relevant sections of the Indian Penal Code. The Investigating Officer legitimately can apply the theory of elimination while filing a final report and all the circumstances were leading to the guilt of the accused and, therefore, the accused only was chargesheeted. The case against Mr. RM Dave might have been found doubtful by CBI. It is true that one crucial witness Mr. Mahendra Patel- relative of PW4 Chetan Patel and friend of PW Mr. RM Dave has not been examined, but this error committed by the prosecution has been appropriately dealt with and, therefore, extra-judicial confession made by the accused has not been believed as genuine and satisfactory to the conscious of the Court otherwise it does not go to the root of the substance of the case.

(ii) Mr. BK Shah and Mr. HD Parmar, though were named as accused in FIR, but the person named in FIR only can be

said to be suspects and persons arraigned as accused by the complainant. In the present case, Mr. BK Shah or Mr.HD Parmar were arrested or produced before the Court. So, CBI had not considered them as accused. The statements of these two witnesses recorded by CBI, therefore, can not be said to be the statements of the accused persons unless they are arraigned as accused while preparing final Report. There is no need to file a formal report under section 169 of CrPC and the IO was not supposed to give accounts of the accused arrested and produced before the ld. Magistrate or the Court in the capacity of the accused. So, the Court is not impressed with the argument of Mr. Amin that non-submission of the report under section 169 of CrPC would adversely affect the fairness of investigation.

21. The Bank employees also have proved the handwritings on the documents seized during the investigation which were recovered from the Bank qua the concerned SB Account and it is stated by the witnesses that they are in the handwritings of the accused. It is not possible to ignore the genuineness of these documents and PW Chetan Patel had seen the accused filling the details in those documents. They were tendered to the competent officer of the Bank i.e. PW 6 Mr. Natvarbhai Patel to get the SB Account opened. The accused had never left the Bank premises when he had

been to the Bank for opening the account. None of the handwritings is in favour of the prosecution. So, the writing in the documents of the Bank can be accepted as writing of the account holder not for the reason that these witnesses were conversant with the handwritings of the accused, but it is proved that Mr. Chetan Patel has seen the accused writing the details in the relevant form i.e. account opening form. On that day itself, Rs.200/ have been deposited. So, the Court can reasonably infer that the handwritings of these documents are and must be in the handwriting of the accused who had posed himself and signed those documents as Mr. JR Vyas. It is true that the ld. Trial Judge has wrongly posed himself as an expert comparing the handwritings with the help of magnifying glass. The jurisdiction of the Court to compare the handwritings under section 73 of the Evidence Act is limited and the Court should not try to put itself in the chair of the handwriting expert. this part of the judgment even if it is ignored, the case of the prosecution sustains because there are ample acceptable reliable evidence on record to show that the handwritings on the bank documents as well as in the IT Refund Voucher Advice are of the accused. The Court is supposed to see overall case and the ld. Trial Judge has appreciated the totality of the evidence. There should be good assessment of the oral as well as documentary evidence and, therefore, the ld. Trial Judge after

considering the various circumstances has held the accused guilty. There is no patent illegality or perversity in the finding nor the alleged lacuna pointed out by the accused are sufficient to de-stable the case of the prosecution. No error which can be said to be fatal to the prosecution has been committed while appreciating the evidence. By reading relevant para-19 of the judgment and relevant part of the statement of the accused recorded under section 313 of CrPC and the contradictions that have emerged from the evidence of PW Jambusaria, it is submitted by Mr. Ravani that the finding recorded by the ld. Trial Judge is not required to be disturbed.

22. Mr. Ravani has placed reliance on the decision of the Apex Court in the case of **Laxmi Raj shetty & Another v/s State of Tamil Nadu, (1988) 3 SCC 319** and has submitted that the seizure of the photograph of the accused should not be viewed with any suspicion or any ill intention of the investigating agency. The accused was the prime suspect along with other two persons named in the FIR. So, to have some clue, the Investigating Officer was entitled to procure the photograph of the accused. When it was found during the search of the house of the accused, it was seized along with other articles and identification by photograph by itself is not contrary to law. He has drawn my attention to the

relevant para-22 of the cited decision where the Apex Court has considered the point of identification by the photograph. On the contrary, the identification of the accused involved in the offence through photograph has been considered a circumstance while evaluating the evidence. Para-22 of the cited decision is divided into more than one sub-paras, but the Court would like to reproduce relevant sub-para-5 of para-22 of the cited decision which, in my view, would be sufficient to appreciate the point that has been pressed into service by ld. Counsel Mr. Ravani. The Apex Court has said thus;

> “5. Stay at Hotel Moti Mahal at Mangalore: There is unimpeachable evidence to establish that the accused Laxmi Raj Shetty on his arrival at Mangalore by train on the 23rd morning at about 6 a.m. Instead of proceeding to his father's house checked into Hotel Moti Mahal with his luggage. The testimony of PW 32 William Anchan, Receptionist is that on the 34rd morning a tall, fair-complexioned person meaning the accused, came to the hotel and gave his name as “Kiran Kumar” and address as Hole Narsipur, Hassan District, saying that he was proceeding to Bangalore. This is borne out from the entry in the Arrival and Departure register Ex.P-42. The accused was allotted room No.204 and he made an entry to that effect. According to him, the said Kiran Kumar

left the hotel on the 25th along with two suitcases. PW 35 Padmanabhan, room boy testifies about the occupation of room No.204 by the accused from the 23rd to 25th. He states that the suitcases were heavy and that he carried them from the room and brought them down and put them in an auto-rickshaw in which the occupant left the hotel and identified the accused Laxmi Raj Shetty as the person who occupied the room. This witness identified the suitcases Mos 176 and 117 which were subsequently seized on the 30th from appellant 2 Shivram Shetty containing currency notes worth Rs.12,27,500/ as the suitcases carried by him. Again, these witnesses on being shown the photograph carried by PW 50 identified him to be the person involved. Further, the testimony of PW 34 Surendran, Reservation clerk, Mangalore Railway station shows that the accused filled in the reservation slip Ex.P-47 giving his name as Shivram Shetty with address as Hole Narsipur, Hassan. On a comparison of the handwriting appearing from the registration card Ex.P-24 filled up by the accused when he checked into Hotel Chola Sheraton with that appearing on the reservation form Ex.P-47, with the handwriting of the accused particularly the similarity in describing Bangalore as “B” lore” and Mangalore as “M” lore”, the learned Judges have come to the conclusion that both the documents were

written by the one and the same person i.e. the accused Laxmi Raj Shetty."

23. It is further submitted that the version of the expert examined in the Court is not in conformity with the observations made by the Author of the book even who may have more expertise in the subject, the Court can consider the opinion of the expert examined irrespective of some conflict between the opinion of two experts i.e. the expert witness examined and the author of the book. He has drawn attention of the Court to the observations made by the Apex Court in the case of **State of M.P. V/s Sanjay Rai, 2004(10) SCC 570.** He has also drawn the attention of the Court to the observations made by the Apex Court in the case of **Bhagwan Das and another v/s Stat e of Rajasthan, AIR 1957 SC 589.** In para-13 of the said judgment, the Apex Court has said thus:-

"13. The learned Sessions Judge was of the opinion that the evidence of the doctor P.W.11 made the story that Shivlal could walk for a little distance up to the Khala of Hukma or was able to talk so as to make a dying declaration, improbable. But the learned Judges of the High Court disposed of this matter by saying that the doctor was comparatively young and that his statement was

not in accord with the opinion expressed in the books n Medical Jurisprudence by authors like Modi and Lyon. But it can not be said that the opinions of these authors were given in regard to circumstances exactly similar to those which arose in the case now before us nor is this a satisfactory way of disposing of the evidence of an expert unless the passages which are sought to discredit his opinion are put to him. This Court in Sunderlal v. state of Madhya Pradesh, AIR 1954 SC 28(A), disapproved of Judges drawing conclusions adverse to the accused by relying upon such passages in the absence of their being put to medical witnesses. The learned Judges of the High Court were, therefore, in error in accepting the testimony of these witnesses in support of the correctness of the two dying declarations nor could the statement of the deceased alleged to have been made in the circumstances of this case be considered sufficient to support the conviction of the accused. The recovery of the kassi is a wholly neutral circumstance because it has not been proved that it belonged to Bhagwandas. ".

Mr. Ravani has also placed reliance on the judgment of the Apex Court in the case of **Sunderlal v/s State of M.P., AIR 1954 SC 28.** Such opinion may go in favour of

the accused or against the accused, but merely because something is found in favour of the accused in the opinion given by the author of the book, according to Mr. Ravani, should not be considered as a piece of evidence against the prosecution. At the most, the Court can use the opinion expressed by the author of the book while evaluating the oral evidence of the expert examined in the Court.

There is ample force in the arguments advanced by Mr. Ravani.

24. There was no reason for the trial Court to discard the evidence of PW Mr. Jambusaria and PW Mr. AA Pathan. By reading relevant part of the statement of the accused recorded under section 313 of CrPC on page Nos. 59, 61, 65 and 67, Mr. Ravani has submitted that the ld. Trial Judge has accepted that the evidence of PW Mr. Jambusaria and PW Mr. Pathan as reliable. Certain facts have emerged as undisputed facts viz. the accused was siting in the room where 4 Clerks of Ward:”C” and 4 Clerks of Ward:”A” of Circle:III were sitting. That PW Mr. Jambusaria, PW Mr. Pathan, Mr. HD Parmar, Mr. BS Parmar and one lady clerk were also sitting with the accused in the said room and the prosecution witnesses examined in the Court from the Income-tax Department were able to see the accused writing; that there was one cupboard having facility of lock and it was common amongst all the four

clerks of one Ward and the documents exh.26 & 27 i.e. Refund Voucher Book and Advice Book were being kept in that cupboard and at the end of the day and at the time of returning to home, these books were being kept in that cupboard and Mr. HD Parmar was keeping keys in the drawer of his table. During the course of the day, cupboard having facility of the lock and key was being kept open and the clerk who comes first in the office was able to open that cupboard. PW Mr. Jambusaria was Upper Division Clerk in Ward:”C” of Circle:III since September, 1985 and the accused was DC Clerk in the same ward and this witness had an opportunity to see the accused writing. However, it is disputed by the accused that Mr. Jambusaria may not have seen him writing in vernacular Gujarati. So, the acquaintance as to the handwriting of the accused by the prosecution witnesses has emerged as undisputed fact or substantively proved fact.

25. Certain false or incorrect answers given by the accused in his statement recorded under section 313 of CrPC are capable of constituting a circumstance and can be used against the accused or in favour of the prosecution while evaluating the strength of the prosecution. The accused had denied the specimen writing collected by the investigating agency. However, it is specifically proved through panchanama and at one place the accused had attempted to show at to which

errors have been committed when specimen writings were collected, but when his attention was drawn to the evidence of PW Mr. Piyush Vyas who had handed over the passbook of SB A/c No.3863, the accused had replied that the facts stated by this witness are not true. He has not denied this evidence in uncertain terms. Though the accused had claimed that there were inimical feelings and relations were strained with prosecution witnesses examined from his department with other witnesses, however, no such suggestions were made during the course of cross-examination to this witness. It is claimed by the accused that PW Mr. RM Dave was treating new customers of the Bank and he had helped Jt. Managing Director Mr. Vishnubhai Patel in the municipal elections by taking leave on cosmetic ground and Mr. HD Parmar has attempted to persuade the accused to give his flat on rental basis to his friend, but the accused had denied. The Income-tax Officer Mr. BK Shah had quarrel with his DC Clerk Mr. BS Parmar and Mr. BK Shah was interested in getting the accused transferred in his ward. So, if the accused was really a blue-eyed man of ITO Mr. BK Shah and was kin to have assistance from the accused as DC Clerk, then ITO Mr. BK Shah would not have at least helped the prosecution to implicate the accused forcibly in such a serious crime. This Court should consider all such relevant aspects while evaluating the findings. Mr. Ravani has submitted that the finding recorded by the ld.

Trial Judge in reference to the acquaintance as to the handwriting of the accused and the discussion made about this aspect which are reflected in para-20 of the judgment. For short, according to Mr. Ravani, the ld. Trial Judge has appreciated all circumstances legitimately proved by the prosecution and the inter-se link between the set of circumstances established by the prosecution. There is complete chain of circumstances linking the accused with the crime.

26. I have considered the rival contentions and the evidence read over to me by ld. Counsel Mr. DF Amin and Mr. Ravani. There is not a matter of dispute that the case of the prosecution against the accused is based on circumstantial evidence. So, the prosecution, as per the settled legal position, is under obligation to prove each circumstance relied upon by legal, cogent and convincing evidence. Each such circumstance either independently or in reference to other circumstances proved, should be of incriminating nature. Such incriminating circumstance or circumstances should be consistent to the guilt of the accused and simultaneously inconsistent to innocence of the accused. By this exercise, the prosecution should show the chain showing inter-linking the circumstances if such circumstances are more than one and the prosecution has also to satisfy the Court that the accused has failed to explain the chain of circumstances linking him with the crime even by rendering plausible

explanation which can be accepted under the principles of preponderance of probability.

27. The prosecution is also supposed to show that there are no lacuna of grave nature and any lacuna even if pointed out by the defence side or is found by the Court, then the prosecution has to show that it does not go to the root of the case of the prosecution and is not sufficient to draw an inference that such lacuna or lacunas individually or collectively can be said to have resulted into serious prejudice to the case of the prosecution. The prosecution has attempted to complete and prove the following circumstances:-

(1) The accused had access to the documents in question which can be said to be or which can be converted into a valuable security i.e. Exh.26 & 27 (IT Refund Voucher Book & IT Advice Book);

(2) In the month of August, 1986 and that too on or about 13.08.1986, the accused intended and opened the SB Account with the Bank;

(3) Though he was not Mr. JR Vyas, he posed himself as Mr. JR Vyas with the said Bank, opened the SB Account and deposited Rs.200/.

(4) That very S/B Account No.3863, IT Voucher of Rs.10 Lakh was tendered for clearing.

(5) The accused used his relations with Mr. RM Dave- co-employee to influence the Bank authorities and mainly PW Mr. Chetan Patel to have a SB Account with the Bank.

(6) The accused had assured the Asstt. Manager Mr. Natvarbhai Patel to bring the SB A/c Number and details of the person introducer who had signed the account opening form as Introducer.

(7) The handwritings on crucial documents i.e. IT Refund Voucher of Rs.10 Lakh, the relevant advice of similar number, bank account opening form, pay-in-slip of Rs.200/ and the handwritings in vernacular Gujarati found on the questioned documents seized, are in the handwritings of the accused.

(8) Attempts made by the accused to withdraw the amount credited on account of clearance of the IT Refund Voucher of Rs.10 Lakh on 11.09.1986.

(9) There is no doubt or question of mistaken identity of the accused and he has been identified as a person who has posed himself to be Mr. JR Vyas in the Bank.

(10) The prosecution has satisfactorily established the chain of all the circumstances which is sufficient to establish the guilt and link between the guilt and the guilty.

28. It is not a matter of dispute that the accused at relevant point of time was a public servant and when it was found that the circumstances pointed out by the prosecution have been proved beyond doubt, then the conduct of the accused can be said to be a criminal misconduct within the meaning of section 161 of Indian Penal Code and also the misconduct which is made punishable under section 5(i)(d) of the Old Act.

29. It is true that two other persons namely Mr. BK Shah and Mr. HD Parmar were named as accused in the initial complaint registered with CBI and there is no formal report under section 169 of CrPC and as pointed out by Mr. DF Amin, certain witnesses have been examined in the Court as witnesses or at least their statements ought to have been recorded by CBI like Mahendra Patel- relative of PW Chetan Patel and friend of PW Mr.RM Dave

and the Court shall have to consider the lacunas pointed out by Mr. Amin from the evidence and the method adopted by the investigating agency. The Court obviously shall have to ascertain whether it is possible to smell any element of unfairness on the part of the investigating agency and it's effect.

30. While adopting the arguments advanced by ld. Counsel Mr. Ravani, ld. APP Mr. Desai has submitted that the alleged infirmities pointed out by Mr. Amin appearing for the accused, do not go to the root of the merit of the order of conviction recorded by the ld. Trial Judge. While evaluating the order of conviction, this Court should not go beyond the scope of challenge. The appellant has challenged his conviction and if the Court finds that the same is based on sound reasons and the accused is linked with the crime on account of various circumstances and a complete chain in between, then the mere suspicion of alleged involvement of either Mr. Chetan Patel or Mr. RM Dave or both would not help the accused and ultimately where it is satisfactorily established that in the capacity of an employee of IT Department, the accused did commit a forgery with a view to defraud the department, finding of the guilt should not be reversed and as nobody has successfully withdrawn the amount or accused had failed in doing so, would not absolve him from criminal misconduct and other offences

committed by him.

31. While appreciating the rival contentions and evidence red over to the Court and the various documents referred to by Mr. Amin as well as Mr. Ravani, it is not necessary to repeat the points that have been placed before the Court and the comments made qua the evidence of witnesses examined are not based on alleged contradictions, omissions in the nature of contradiction or modulation made by the defence. So, it is not even necessary to put up the gist of the version of these witnesses. The contradictions pointed out or important improvement made by these witnesses are not found material in nature and this aspect clearly emerges from the details of arguments placed by ld. Counsel Mr. Amin referred to herein above.

32(i) The accused during the period of commission of the offence i.e. between August 1986 and September 1986, was serving as Upper Division Clerk (UDC) in Ward-C of Circle:III of city of Ahmedabad. It is established by the evidence and admitted by the accused that his work place was in the very room where other prosecution witnesses examined viz. PW Mr. AA Pathan, PW Mr. MR Jambusaria, PW HD Parmar along with other four employees were accommodated in a room. In that very room, four clerks of Ward:C and four clerks of Ward:A were

accommodated . PW Mr. BK Shah was Income-tax Officer for Ward:A and PW HD Parmar was under Mr. BK Shah. Of course, the investigating agency has not produced any map showing the sitting arrangements made by the department of the room wherein all these clerks and mainly the witnesses examined by the prosecution were accommodated and, therefore, it is not possible to make the comment on this aspect, but as per the oral evidence of the witnesses examined, it is clear that the distance between the working table of the accused and Mr. AA Pathan was negligible. In the same way, PW HD Parmar and Mr. Jambusaria were sitting in the close vicinity from the place where the accused was working. The distance must not be, as per evidence, more than three, four or five ft. i.e. the distance left for some passage and movement amongst the staff members. As the accused has challenged the point that the prosecution witnesses are having acquaintance with the handwritings of the accused, the distance of working tables of the prosecution witnesses and the accused would be relevant to some extent. But normally when it comes through the evidence of co-employee working in the same department and period of working in the same category and status and that too sitting in the same room, it becomes more relevant and the ld. Trial Judge has concentrated on the evidence and has discussed that part of evidence in this background. So, while evaluating the judgment under challenge, the

Court can not ignore other background of the facts. It is true that there is no documentary evidence to show that Income-tax department had any undisputed handwriting of the accused in vernacular Gujarati and no such undisputed handwritings in vernacular Gujarati have been obtained by the investigating agency from the department. So, during the course of examination of the prosecution witnesses and mainly PW Mr. AA Pathan and PW Mr. Jambusaria who have stated that they had seen the accused writing in Gujarati and the accused himself has shown leaflets of the poetry written by him and, therefore, they can identify even Gujarati handwriting of the accused, was required to be appreciated. Whether it would be safe to accept the bare words of these witnesses claiming acquaintance with Gujarati handwriting of the accused was a question.

(ii) So, before placing reliance on this part of the evidence, the Court can consider the evidence of PW Chetan Patel because according to this witness, on the day on which S/B Account was opened in the name of Mr. JR Vyas, the accused had posed himself as Mr. JR Vyas and he had completed all formalities for the purpose of opening the account while he was very well there in the Bank. It has not come on record that the accused had ever left the bank premises when he was asked to fill up the application and account opening form-cum specimen

signature form. It is also in evidence that on that day itself, Rs.200/ were deposited. Normally, the Court can legitimately infer that no Bank, unless there is a specific scheme, would open the account with “0” balance. It is in evidence and there is no controversy on the point that Rs.200/ were deposited in SB A/c of Mr. JR Vyas opened on 13.08.1986 and it is the say of the prosecution that handwritings in pay-in slip and details shown in the account opening form are in the handwritings of the accused. Mr. Chetan Patel has stated that he had seen the accused writing. It is true that seeing a person writing from a reasonable good distance can not be said to have acquaintance with the handwriting of that person required to be established as per the scheme of section 45 of the Evidence Act, but the Court can not ignore the evidence of PW Chetan Patel that he has seen the accused writing in account opening form etc. for opening the bank account. Original account opening form has been seized and produced. In the same way, money pay-in-slip is also on record. The Court can reasonably compare under section 73 of the Evidence Act the handwritings in account opening form as well as in pay-in-slip. It was neither argued before the trial Court nor before this Court that the handwritings and details in the account opening form and money pay-in slip are materially different and they are of different persons. The Court is conscious that while exercising the

jurisdiction vested with the Court under section 73 of the Evidence Act, the Presiding Officer should not put himself into the chair of an expert, but there are some areas where it was possible for the Court to compare the handwritings. Some times, similar handwritings are so significant that even a lay man can make such assessment. So, while evaluating the oral version of the co-employee of the accused about his acquaintance with Gujarati handwritings of the accused, the set of evidence to prove the Gujarati handwritings on the documents seized from the Bank can help the Court. So, it is difficult for this Court to say that there is nothing on record except the bare words of co-employees about their so-called acquaintance with Gujarati handwritings of the accused on the question documents.

33(i) It is necessary to deal with the oral as well as opinion evidence tendered by the handwriting expert qua the questioned documents while commenting on the discussion made by the trial Court in this regard. It would also be necessary to discuss some part of such other evidence at this stage, because one of the circumstance against is that he had access to two material questioned documents i.e. IT Refund Voucher Book and Advice Book. When it is in evidence that any of the four clerks sitting in the room where the accused was sitting, if comes early or PW Mr. HD Parmar who was in

effective control of the keys is reaching late to the office or if he is on leave, the other clerks of ward:A had easy access to the cupboard having facility of the lock & key, then it can reasonably be inferred that anybody sitting in the very room also can have access to the drawer wherein the keys of the cupboard were kept which was in charge of PW Mr. HD Parmar. It is neither in oral evidence nor it has come on record in any other manner that Mr. HD Parmar once named in the FIR as suspect was applying the lock to the drawer of his table which he was using. There is reliable evidence to show having sufficient corroboration of PW HD Parmar that he was keeping keys of the cupboard in the drawer to facilitate his co-employees so that they can have access and continue their work even though he is late in reaching the officer or he is on leave. One of the pages of IT Refund Voucher Book and Advice Book might have been taken out of the book at any time prior to the day on which it was tendered in the Bank for clearance. It may be after 13.08.1986 and before the date of depositing it in the Bank or even it may be prior to 13.08.1986. In such contingency, the Court should not expect that the prosecution should lead evidence of cogent nature to the effect that on which day these two pages were taken out from the original books. From a bundle, say, of about 50 currency notes if some one takes out one out of such currency notes having tagged serial number-wise, the same

can not be noticed unless the user of currency notes reaches to that particular number and if he is so cautious about the number of currency notes used. So, merely because Mr. HD Parmar was entrusted with two books of valuable documents, it was not possible for the Court to draw inference against Mr. HD Parmar in absence of any cogent circumstance which can be said to be against Mr. Parmar.

(ii) It is rightly argued by Mr. Ravani and as discussed earlier, that investigating agency has every right to apply the theory of elimination. It would not be wrong to say that everything should be left to the Court and that the police during the course of investigation, should not drop or can not drop any of the suspects from it's clutches. It appears that Mr. BK Shah and Mr. HD Parmar were directly responsible as per the evidence collected by CBI and led during the trial to take care of IT Refund Voucher Book and Advice Book. So, these two witnesses viz. PW Mr. BK Shah and PW Mr. HD Parmar had access to these two books, but it would be proper for the Court to say that these two persons can be placed in the category of the persons who were authorized to use the books. So, normally the investigating agency would concentrate also on the persons who also had access to these two books. It has come on record that the evidence on record clearly suggests that everybody sitting in the

room where Mr. HD Parmar was sitting, had access to these two books. It is not in evidence whether Mr. RM Dave was sitting in that room, but if the evidence is read collectively, one Mr. Kirit Sheth, PW Mr. Jambusaria, PW Mr. AA Pathan, PW Mr. HD Parmar, one Mr. BS Parmar, one lady clerk Ms. Rozi and Mr. KS Mehta along with the accused were sitting in that room. Mr. RM Dave was not there in the room in which these books were kept. It is necessary for the Court to concentrate on the conduct and other responsibilities being a person serving with IT Department because during oral arguments, Mr. Amin has attempted to show the cloud of doubt on account of non-implication of Mr. Dave in the crime. It is true that the handwritings of other persons sitting in the room viz. of Mr. AA Pathan or Mr.Jambusaria neither were taken by the investigating agency nor were sent for examination, but when it is necessary or otherwise required for the investigating agency to produce negative evidence, only in that contingency, such exercise was warranted. The prime suspects normally are brought in the investigating net first and if investigating agency is able to collect incriminating evidence against all or one of such suspects, then it is not necessary to collect negative evidence as indirectly suggested by Mr. Amin. Handwritings of Mr. BK Shah were taken and sent for analysis and as discussed above, it is satisfactorily established that signatures in the name of Mr. BK Shah

found on the questioned documents namely IT Refund Voucher of Rs.10 Lakh and IT Advice regarding this very voucher that was sent to RBI, are not in the handwritings of Mr. BK Shah. There was no reason either for Mr. AA Pathan or Mr. Jambusaria or Mr.BK shah to implicate the accused vice Mr. HD Parmar who was entrusted with the custody of these books. It is not even suggested to PW Mr. BK Shah that with a view to save his subordinate Mr. HD Parmar, the accused has been made scape-goat. On the contrary, the claim of the accused is that Mr. BK Shah had some differences with Mr. HD Parmar and he i.e. accused was blue-eyed boy and, therefore, Mr. BK Shah was interested in taking the accused under him. In such a situation, there was no need for investigating agency to collect the handwritings of Mr. HD Parmar. IO even had sent specimen as well as undisputed handwritings of Mr. HD Parmar for examination and they were considered at the time of forming opinion. The CBI had clear opinion that the crucial documents do not bear the signature of Mr. BK Shah. It was possible otherwise for Mr. HD Parmar to obtain surreptitiously the signature of Mr. BK Shah on these two documents. Whether Mr. HD Parmar could have forged the signature of Mr. BK Shah with the help of any third person on these two documents and might have attempted to defraud the RBI as well as the IT Department, can be a question and it is true that this point has not been elaborately discussed by the ld. Trial

Judge, but such a hypothesis does not find any merit because there is other reliable evidence to link the present accused with the handwritings on the above said questioned documents and so also on the documents recovered from the Bank. The finding of the ld. Trial Judge is not based solely on the basis of the opinion of the handwriting expert. Ultimately, true it is that the opinion evidence by itself is a weak piece of evidence and science applied by the handwriting expert is not a perfect science like the science of finger print or DNA test, but ultimately it is a science and while taking assistance from scientific assistance a finding which is not near to perfection, the Court should try to get some evidence of reliable nature before using the opinion expressed by the handwriting expert as corroborative piece of evidence. So, while concentrating on the evidence led against the accused, the circumstance of the accused having access to these two books, assumes importance. It is not possible for the Court to accept the say of Mr. Amin that the accused had no access to the cupboard nor to the keys which were being kept in the drawer as stated by PW Mr. HD Parmar and nothing wrong happened to these two books containing blank forms which can be converted into a valuable security and so the person entrusted with these documents only can be held responsible for its criminal misuse.

34(i) The second circumstance against the accused placed by the prosecution is that the accused has posed himself as Mr. JR Vyas and had opened the account with the Bank and the intention to open this bank account was to deposit the forged IT Refund voucher of Rs.10 Lakh. It was the duty of the prosecution to establish beyond doubt that the person who opened the SB Account No. 3863 in the name of Mr. JR Vyas is nobody else but the accused himself and to prove this transaction, the prosecution has examined PW Mr. RM Dave, PW Mr. Chetan Patel, PW Mr. Natvar Patel and PW Mr. Piyush Vyas. Of course, the extra-judicial confession has not been believed by the trial Court, but it is the say of the prosecution that even before the Manager of the Bank, the accused had accepted that he is the person who had posed himself as Mr. JR Vyas in the Bank. So, if the extra judicial confession is ignored, it was possible for the Court to appreciate the evidence whether the evidence of above said witnesses is sufficient from all angels to conclude that the SB Account was opened by the accused and he has posed himself to be a person Mr. JR Vyas.

(ii) It is true that Mr. Chetan Patel is an important witness, but he is not the only witness nor the key witness. The evidence in this regard can be appreciated collectively. This PW Mr. Chetan Patel was close relative of Jt. Managing Director of the Bank and his role to

some extent is found dubious. The plain reading of the deposition of Mr. Chetan Patel may create an impression that perhaps he is not unfolding the real story otherwise he could have named the person or identified the person who had signed as a person introducing the accused as Mr. JR Vyas. It is possible for the Court to read the signature of introducer in account opening form and in the signature surname “Patel” is legible, but it is not suggested to Mr. Chetan Patel by the defence counsel that the handwritings of the signature of the introducer are the handwritings of this witness i.e. PW Chetan Patel. It is in evidence that the accused was having one SB Account in Canara Bank and the Usmanpura Branch of Ellisbridge Co.Op.Bank at least was not the nearest Co.Op.Bank from the residence of the accused.

(iii) It is in the evidence of PW.13 Mr. RM Dave that in the month of August 1986, the accused was serving as Upper Division Clerk with him in the same Income-tax Ward and he had told him that he wanted to open the Account in the Ellisbridge Co.Op. Bank. This Mr. RM Dave was knowing one Mr. Chetan Patel serving in the said Bank. On 13.08.1986, they waited for Mr. Chetan Patel near the entry gate of the Bank in the morning and Mr. Chetan Patel came where they were standing at about 10.10. a.m. The accused was introduced to Mr. Chetan Patel by Mr. Dave as his friend and co-employee in IT

Department. Mr. Chetan Patel as asked by Mr. Dave that as his friend i.e. accused wants to open the account in the Bank and, therefore, he has come with him to recommend and to introduce him. However, as this witness Mr. Dave was having some work in the office, he left the Bank and the accused then had entered into the Bank with Mr. Chetan Patel. This very witness is having SB A/c in the very Branch of the said Bank. According to Mr. Dave, he was knowing Mr. Chetan Patel since last five years and he was aware that the maternal uncle of Mr. Chetan Patel namely Mr. Vishunubhai Patel was a Joint Director in the said Bank. In the cross-examination, this witness has said that few days or prior to about 10 days of 13.08.1986, he had already intimated Mr. Chetan Patel that one of his co-employee and friend wants to open the account in the same branch of his Bank. So, it is inferable that the discussion about the opening of the account in the Ellisbridge Co.Op.Bank, Usmanpura Branch must have taken place either in the beginning of the month of August,1986 or in the last days of July, 1986. The conduct of this witness Mr. Dave and his presence in the very office and the Ward where the accused has been serving, has been commented by Mr. DF Amin, ld. Counsel appearing for the accused and he has tried to arraign this witness as co-conspirator or the accused person responsible for the forgery and criminal act committed, but it has come on record satisfactorily that at the

instance of the accused, the SB Account No.3863 was opened in the Bank and the accused was introduced with Mr. Chetan Patel by PW Mr. RM Dave. Mr. RM Dave had seen the accused entering the Bank with Mr. Chetan Patel and there is documentary evidence to show that SB Account of the accused was opened in the Bank on 13.08.1986. There is no documentary evidence to show whether on 13.08.1986, the accused was on leave because no witness from IT Department has thrown light on this aspect. It is not even the defence of the accused if the statement of the accused recorded under section 313 of CrPC is read closely, that he was on duty on 13.08.1986 and had not entered even the Bank on 13.08.1986. Of course, the accused had denied that he is the person who had posed himself as Mr. JR Vyas and opened the disputed SB Account. The version of PW Mr. Chetan Patel Exh.41 is corroborated by the evidence of PW Mr. RM Dave at least on the point that the accused was introduced to Mr. Chetan Patel by Mr. RM Dave. There was no reason for the trial Court to discard the evidence of Mr. Chetan Patel that he had helped the accused in getting the account opened on 13.08.1986. Of course, it is debatable whether this witness Mr. Chetan Patel was misled by the accused or PW Mr. RM Dave or by both or Mr. Chetan Patel was aware about the real identity of the accused of not being a person- Mr. JR Vyas and Mr. Amin has attempted to demonstrate the same shadow of doubt on

this aspect. However, it is satisfactorily established that the accused was the person who opened the Bank Account in the name of Mr. JR Vyas. Even for the sake of arguments it is accepted that the surreptitiously leaving of Mr. RM Dave from the entry gate of the Bank instead of introducing the accused in the Bank for the purpose of getting the bank account opened, is sufficient to suspect of some the involvement of Mr. RM Dave in the entire incident, otherwise he being the account holder in the same Branch of the Bank, could have introduced the accused or at the best would have introduced the accused by giving perfect introduction with name etc. However, this would not help the accused in any way. It is in evidence that one account holder only can identify and sign as “introducer” in the account opening form of a new customer. To sign the account opening form would not have taken the time of more than one minute. The handwritings of Mr. RM Dave were taken by the investigating agency, but for the reasons best known to the Investigating Officer, no opinion was sought from the expert whether the signature wherein surname “Patel” is legible, is in the handwriting of Mr. RM Dave. So, the Court does not have that shade of evidence. It was possible for Mr. Chetan Patel to inform Mr. Natvarbhai Patel, Asstt. Manager that the customer has been introduced to him by Mr. RM Dave and he knows Mr. RM Dave since long. Mr. RM Dave is the account holder in the

branch of the Bank and so there is no hesitation to open the account of the accused. Otherwise, this could have come on record in the nature of positive evidence. On the contrary, it emerges from the evidence of Mr. Natvar Patel- Asstt. Manager and PW Mr. Chetan Patel that on the assurance given by the accused that he will bring the details of the account of the person who had introduced him for the purpose of opening the bank account as he was introduced also by Mr. Chetan Patel being a staff member, the account of the accused was opened. If the depositions of Mr. Chetan Patel exh.41 and Mr. Natvar Patel exh.44 are read simultaneously, then it emerges that PW Mr. RM Dave was the person who had introduced the accused to PW Mr. Chetan Patel. Mr. Chetan Patel, being the nephew of the Jt. Managing Director of the Bank, the persons involved in attempting to defraud the IT Department and in turn RBI, therefore may have selected this witness. This witness has stated that the person who was introduced to him by Mr. RM Dave had undergone exercise to open the bank account and that man was all the while in the Bank and he had seen him writing the details on the account opening form. According to this witness, Mr. Dave had asked him to help his friend in opening one bank account in the end of July 1986 and he had met Mr. Dave on 4 to 5 occasions before 13.08.1986. The witness has claimed that the name of the account opener was never discussed or intimated to

him, but there is no reason for the Court to discard the version of Mr. Chetan Patel that he had seen the accused writing the details on account opening form which also contains the space for specimen signature. He has stated in his cross-examination that when the accused was putting /writing details in the account opening form, he was standing before him. This fact has come on record during the cross-examination of this witness and there is no contradiction on this aspect. This witness has denied that he did help the friend of Mr. RM Dave and that friend was helped in getting the SB Account in question opened in the name of Mr. JR Vyas. From the cross-examination made by the defence counsel of PW-6 Mr. Natvar Patel, one fact has come on record that he opened account relying on his staff member Mr. Chetan Patel and the accused had assured Asstt. Manager PW Mr. Natvar Patel that he would bring the details of the account number and address of the person who had signed in the column of “introducer” and in turn the accused was also told that on brining the account number only, the account shall be opened. This would mean that Mr. Natvar Patel had an opportunity to converse with the accused. This witness has identified the accused as a person who had approached him for the purpose of opening the disputed bank account posing himself to be Mr. JR Vyas. Though it is argued that the identity of the accused for the first time in the Court by this witness

ought not to have been relied upon by the ld. Trial Judge and evidence qua identification of the accused by this witness with the person who had posed himself as Mr. JR Vyas, should be discarded in absence of any TI Parade. Merely because this witness has not stated in his police statement about the exact date of conversation that has taken place between him and the accused, would not make the evidence of this witness Mr. Natvar Patel unreliable. He is the person who had signed the account opening form. His signature has been identified by PW Mr. Chetan Patel.

(iv) There is no dispute as to his authority to approve the application made for the purpose of opening the account in the Bank. He has also proved the disputed SB Account. This witness has not stated either in examination-in-chief or in cross-examination that the employee of the Bank namely Mr. Chetan Patel had ever referred the name of Mr. RM Dave who undisputedly is the account holder in the same branch of the Bank, nor Mr. Chetan Patel has stated that he had told PW 6 Mr. Natvar Patel at the time of scrutiny of the account opening form that one Mr. RM Dave had introduced this customer and that Mr. RM Dave is holding the account and so his signature can also be obtained if need be. Merely because Mr. Patel had proved the account opening form and the fact that account was opened on 13.08.1986, in absence of

details of introducer, would not make this witness Mr. Natvar Patel vulnerable and a person involved in the conspiracy hatched by some third person than the accused. Of course, it is argued that real conspiracy probably was with Mr. RM Dave and he may have seen some unknown person for the purpose of opening the account and the Bank staff including Mr. Natvar Patel and Branch Manager Mr. Lakhani and Mr. Piyush Vyas exh.42 had helped the case of the prosecution so that they can save Mr. Chetan Patel from the involvement in the conspiracy being a nephew of Jt. Managing Director of the Bank. Acceptance of this argument would be nothing but stretching too far beyond the logical end because the prosecution relies not only on the oral evidence of the bank witnesses, but also on other piece of evidence and circumstances. The person examined from the Bank provides and proves one circumstance that the accused either with Mr. RM Dave or with the help of Mr. Dave had thought to open SB Account in the end of July,1986, the accused was introduced to Mr. Chetan Patel personally on 13.08.1986 and on that very day, Account No.3863 was opened by the Account Clerk. That account is not in the name of the accused, but the same is in the name of Mr. JR Vyas. So, the accused, even if was personally responsible for influencing Mr. Chetan Patel or because of collective efforts by Mr. RM Dave and the accused the account was opened, that would not be the matter of much relevance.

Attempt to influence a bank employee without taking the details of introducer for the purpose of opening the SB Account contrary to the norms and regulations of the Bank, is a conduct which is relevant and that has been proved by Mr. Chetan Patel and PW Mr. Natvar Patel.

(v) In the same way, whether PW Mr. RM Dave was conspirator or abettor in the crime was not the question before the trial Court. At the most, it was possible for the Court to comment while appreciating the evidence of Mr. RM Dave that he may not have acted bona fide and he may also be a party to the attempt made by the accused and the conduct of PW Mr. RM Dave is a conduct of an accomplice because he has omitted to state certain things that have been stated by Mr. Natvar Patel and Branch Manager Mr. Lakhani qua the conversation that has taken place between Mr. Lakhani and Mr. RM Dave and that too in the presence of one more person i.e. Mr. Mahendra Patel. Surprisingly, CBI has not cited this Mr. Mahendra Patel even as a witness. It is claimed by PW Mr. Chetan Patel that he knows PW Mr. RM Dave being a friend of Mr. Mahendra Patel otherwise the some other facts as to the acquaintance between Mr. Chetan Patel and PW Mr. RM Dave would have come on record. It is the case of the prosecution that the accused had made extra-judicial confession in the presence of this Mr. Mahendra Patel, Manager Mr. Lakhani and Mr. RM Dave. However, Mr. Dave has not stated anything qua the extra-judicial confession

made. The Court is of the view that after the evidence of Mr. RM Dave who has been examined at a later stage of the trial as PW 13 and when the Court realized that the prosecution has neither cited Mr. Mahendra Patel as witness nor intended to introduce him as witness with the permission of the Court or the prosecuting agency has not even requested the Court to call Mr. Mahendra Patel as the Court witness to substantiate the evidence collected in the nature of extra-judicial confession. Mr. RM Dave could have been joined as co-accused in exercise of the powers vested with the Court under section 319 of CrPC suo motu on account of the conduct of this witness. But this lacuna by itself is not sufficient to uproot the case that has been found established by the trial Court.

(vi) Involvement by one or more than one persons in the crime, even if it is there, would not be sufficient to ignore the liability of the accused. It is true that the accused can take up a plea that filing of the chargesheet against only one by CBI is the result of the unfair investigation, but some procedural error by itself would not be sufficient for the Court to say that the investigating agency has acted in an unfair manner and that has resulted into serious prejudice to the defence. CBI has collected and the prosecution has led sufficient evidence as to the involvement of the accused personally

in opening the bank account. One more witness Mr. Piyush Vyas has also identified the accused. All the employees of the Bank who have identified the accused as a person who had posed himself as Mr. JR Vyas and person holding SB Account in the Bank, would not have become a party in implicating a false person who is totally innocent. It is true that they may succumb to browbeating of the investigating agency like CBI, but ultimately they were the employees of a private co-operative Bank and all unanimously should have said that it is not possible for them to identify the person who had posed himself as Mr. JR Vyas. He may be or may not be an employee of IT Department. This by itself would not have made all the employees responsible for the criminal wrong traced out by CBI. The Court is not convinced by the arguments advanced by Mr. Amin that under an apprehension that Mr. Chetan Patel and Mr. Natvar Patel may be made accused by CBI as they were responsible in opening the account in the name of Mr. JR Vyas, they must have decided to help the investigating agency. The crucial question before the Court which needs consideration is that why CBI would implicate the accused falsely and that too for want of any other cogent evidence? There was no element of animosity between the Investigating Officer and the accused and agency like CBI would not become a tool in the hands of some other Upper Division Clerk serving either in Income-tax Department or in RBI. Mr. DF Amin,

ld. Counsel appearing for the appellant has attempted to place the arguments to the extreme by saying that somebody working in RBI also may have involvement otherwise the IT Refund Voucher Order for Rs.10 Lakh would not have been cleared immediately on the day on which it was tendered for clearance. Hypothesis placed by Mr. DF Amin is found attractive. However, they are found based on number of ifs and buts. Sheer stretching the logic to its maximum is not capable to carve out a successful defence or such exercise would not affect the root of the case of the prosecution. Of course, the accused is not supposed to prove the defence. The prosecution has to prove its case beyond reasonable doubt and weakness in the case of the defence even can not be used as a circumstance against the accused, is a settled legal position. The proposition placed by the accused to carve out the defence on probabilities should sound strong logic under which the court can draw a reasonable inference in favour of the accused. I have considered the findings recorded by the trial Court on the point of identity of the accused established by the prosecution as a person who had introduced himself as Mr. JR Vyas with the Bank for getting the disputed bank account opened on 13.08.1986. On the contrary, it has emerged that CBI was having a photograph of the accused. That photograph is available on record which was shown to the bank witnesses. Those days were the recent days of

incident and in a small co-operative bank a person if comes with IT Refund Voucher Order of Rs.10 Lakh, would get special attraction and attention. An intelligent banker would look at such a person as a potential customer rolling in lacs of rupees and, therefore, the Court is of the view that it would neither be legal nor proper to say that the ld. Trial Judge has erroneously accepted the evidence on the point of identity of the accused. On the contrary, this evidence is found reliable and these witnesses have satisfactorily established that the accused had conversation with PW Chetan Patel, PW Natvar Patel and PW Piyush Vyas posing himself as Mr. JR Vyas. As discussed earlier, the accused had visited Mr. Piyush Vyas on more than one occasion and he was the person recipient of the passbook from Mr.Piyush Vyas having credit entry of Rs.10 Lakh and he was a person who persuaded the accused to come on the next day for withdrawal of the said amount under some pretext. Why the evidence of Mr. Piyush Vyas should be discarded on the point of identity of the accused, is the question.

(vii) For short, the Court is of the view that there is sufficient evidence as to the identity of the accused and it is found established beyond doubt that the accused is the person who had posed himself as a person Mr. JR Vyas and opened the disputed account with the Bank. It is true that merely because the prosecution has

established one fact that prior to depositing of Rs.200/ in the newly opened SB Account with the Bank, the accused had withdrawn some amount from his SB Account with Canara Bank, such evidence would not help the prosecution as incriminating circumstance because Rs.200/ was not that much big amount which a Central Government employee could not have arranged if he really had intended to open the SB Account with ulterior motive and that too between the end of July,1986 and 13.08.1986. The accused would have received even salary of entire month of July 1986 during that period. CBI was not required to put up any such exercise in collecting and leading such evidence which may not have any impact on the merits of the case. The ld. Trial Judge has rightly appreciated that when Rs.200/ were credited in the account of Mr. JR Vyas, legitimate inference could have been drawn that the person deposited/paid the amount of Rs.200/ as initial credit amount in the bank account, must be the person interested in operating that account and to appreciate that aspect, the evidence of pay-in-slip collected from the Bank Exh.34 was required to be considered closely. When it has been found proved beyond doubt that the accused is the person who had opened the disputed account on 13.08.1986 and in that very account Rs.200/ were received as credit, unless contrary is proved or otherwise it is found under great shadow of doubt, a legitimate inference can be drawn that the

person who had opened the account must have credited that amount of Rs.200/. However, the ld. Trial Judge has considered the document exh.34 and opinion expressed by the handwriting expert in this regard. Mr. AA Pathan Exh.29 has said in para-8 of his deposition that the signature read as “JR Vyas” is in the handwriting of the accused and the said signature is in English and the accused had accepted that this witness had acquaintance and could identify his handwriting in English. So, there is direct evidence of Mr. AA Pathan, corroborative evidence of handwriting expert which is in the nature of opinion evidence, it is clear that the amount in the disputed account was credited by the accused. Similar fact situation is found proved qua tendering the forged Income-tax Refund Voucher of Rs.10 Lakh in the Bank by filling the pay-in-slip exh.35. Document exh.35 is a pay-in-slip and it was tendered on 06.09.1986. It bears the signature of Mr. JR Vyas as a person tendering the IT Refund voucher of Rs.10 Lakh along with the pay-in-slip. Of course, it is not specifically written in the slip that valuable security tendered is Income-tax Refund Voucher, but as such there is no dispute about the nature of valuable security which was given to the Bank. The signature which is legible and can be read as “Mr. JR Vyas” is found in the handwriting of the accused because this signature is also proved to be in the handwritings of the accused by Mr. AA Pathan and the

handwriting expert. There is no reason for the Court, therefore, to discard the evidence of PW Mr. Piyush Vyas wherein he has stated that the accused -a person who had come to inquire about the clearance of the refund voucher of Rs.10 Lakh was the present accused and he had some conversation with him. So the prosecution has satisfactorily established and proved the act of depositing Rs.200/ and Income-tax Voucher of Rs.10 Lakh in the Bank by the accused beyond doubt.

35. Whether the accused himself had attempted to withdraw the amount or had visited again for the purpose of withdrawing the amount credited by him and was asked to come on the next day, is the second phase of evidence. The evidence led by the prosecution when is found satisfactory having ample corroboration by the handwriting expert, the accused could have been linked with the crime found proved by the ld. Trial Judge even without entering into the detailed discussion of the second phase of the event which pertains as to how the accused attempted to withdraw the amount and was prevented and story of defrauding the IT Department as well as RBI was brought under light. The ld. Trial Judge while dealing with the cited decision in the case of **Rahimkhan Khurshid Ahmed v/s Khurshid Ahmed & Others, AIR 1975 SC 290,** has observed that in the instant case, the accused in his further statement has admitted that Mr.

AA Pathan had seen him writing in English. As discussed earlier, it is the claim of Mr. AA Pathan that he is acquainted with the handwriting of the accused. He is a co-employee sitting in the same room and it is rightly observed therefore by the ld. Trial Judge that " there is no reason to discard his evidence nor can it be said that he is not conversant or familiar with English and Gujarati handwriting of the accused." It is true that as per the scheme of section 47 of the Evidence Act, a person who claimed that he is competent to prove the handwriting has to prove that he is acquainted with the handwriting of the accused. How a co-employee could identify Gujarati handwriting of the accused and why co-employee should be believed and mainly Mr. AA Pathan qua his competence to identify Gujarati handwriting of the accused, has been discussed by the ld. Trial Judge in para-20 of his judgment.

36. The Court is not convinced with the arguments advanced by Mr. Amin that there is no convincing evidence qua the identity of the handwriting of the accused nor the evidence as to "to have acquaintance with the handwriting of the accused" by the prosecution witnesses examined from the Income-tax Department. The accused in his further statement has stated and it is also argued by Mr. Amin that there was reasonable distance between the table of the accused and the

witnesses examined and merely because a co-employee is able to see other employee working in the same room writing something, can not claim acquaintance with such handwriting. The period of working in the same room is found between 7 to 10 months. The explanation given by the accused so far as animosity is concerned, is also not found simultaneously convincing. So, it would not be safe for this Court to say that the witnesses who have identified the signatures and mainly by Mr. AA Pathan and Mr. Jambusaria, have given false evidence. The evidence given by Mr. Jambusaria has been independently appreciated. The ld. Trial Judge has observed that this witness was competent to come into contact with Gujarati handwriting of the accused. Though the department is using English language for all administrative purposes, but when it comes to a peon, the clerk concerned gives acknowledgment address etc. of the assessee who is to be served with the notice or any other document, in Gujarati language. So, it was not impossible for PW Mr. Jambusaria to come in contact and in acquaintance with vernacular Gujarati handwriting of the accused. It is true that there is no corroboration from the opinion evidence which can be said to be helpful to the prosecution, but it has come on record that in the documents recovered from the Bank, Mr. Chetan Patel had seen the accused writing the details. Thus, the handwritings have been identified by Mr. Jambusaria as

the handwritings of the accused. In this background, the ld. Trial Judge has appreciated the evidence of Mr. AA Pathan and Mr. Jambusaria. It is true that in the police statement, Mr. Jambusaria has stated that he could not definitely state as to whether the details in duplicate IT Refund voucher and advice note shown to him were in the hands of the accused, while in the evidence before the trial Court, he has stated that the disputed documents and signatures thereon are in the hands of the accused and that he is familiar with the handwriting of the accused. This improvement is a material improvement. The crucial question would be whether his version before the Court should be believed as reliable, but when the accused in his further statement has not made any allegation either against Mr. Pathan or Mr. Jambusaria, this witness had no Axe to grind. None of these witnesses even was a suspect. It is very likely that initially they may have thought to help out the suspects being co-employees and one of them when was Income-tax Officer Mr. BK Shah, by answering the investigating agency in a vague manner, but after getting the things crystallized in the development of the investigation, they had stated the things plainly to the Investigating Office and they have stuck to their version even during their cross-examination. The approach of these two witnesses and mainly the witnesses who have not shown the courage to tell the truth at initial stage, at the most can invite

criticism of the Court. However, only on this ground, the evidence of the witnesses should not be discarded especially when his oral version before the Court is found supported by the opinion evidence of an expert. It is the duty of the Court in the fact finding mission to see whether it is possible to separate the grains from the chef and in the judgment of the ld. Trial Judge (from page Nos.1017 to 1077 of the paper-book), the ld. Trial Judge has made that exercise.

37. The Court has rightly considered the evidence of Bank Manager Mr. Lakhani. The ld. Trial Judge has rightly not believed the evidence of Mr. Lakhani so far as the extra-judicial confession is concerned. Non-examination of Mr. Mahendra Patel as witness by the prosecution and when Mr. RM Dave has not stated anything qua the alleged extra-judicial confession made by the accused when he was undisputedly even present as per the say of PW Mr. Lakhani, it was not safe for the trial Court to use the admission of the accused as confession. There is some confusion as to the time when Mr. Lakhani came to know about the attempt to defraud the Bank and/or RBI was traced. There is no consistency as to the time of arrival of Mr. Lakhani in the Bank on the day on which the fraud was detected. It is rightly argued that it was possible for Mr. Piyus Vyas to ask the accused to wait in the Bank and it was also possible for the Bank Officer

Mr. Natvar Patel at least to call the police when the accused had really visited the Bank for withdrawal of the amount as alleged. The visit of the Branch Manager Mr. Lakhani at a given address mentioned in the account opening form may be a genuine visit, but it also simultaneously appears that somebody either from the vigilance cell of the Income-tax Department may have informed Mr. Lakhani to go deep into the matter and, therefore only he might have paid visit at the house at the address shown in the account opening form. How Mr. Lakhani came to know about the address in the early morning, whether he had taken details of the address when he left the Bank on previous day, is also a question which has not been successfully replied by any of the prosecution witnesses. It is claimed by Mr. Lakhani that he had visited the bungalow shown in the account opening form in the early morning and thereafter he had rushed to the bank at 10.00 a.m. and had made an endorsement in the ledger book. According to Mr. Piyush Vyas, he had reached the Bank on that day at 10.30 a.m., Mr. Lakhani had called Mr. Piyush Vyas and had inquired that who is the person who had introduced Mr. JR Vyas in the Bank while opening the account. So, Mr. Vyas along with other employees were conscious and had smelled about the fictitious account and in such a situation, the accused could not have been permitted to go out of the Bank. No attempt was made either by Mr. Lakhani or by

anybody from IT Department to lodge a complaint with police or CBI. The Court is able to draw an inference that at one point of time, the authorities of Bank and IT Department may have decided to hush up the matter as no actual loss was suffered either by the Co.Op.Bank or IT Department. Such a tendency has affected the health of the country and solidarity of the government and non-government organizations, but this is not the stage where the Court should make any comments against both these responsible departments. The Court at present is concerned whether any error in judgment is committed or whether the conduct of the persons concerned is able to uproot the case of the prosecution or not. Sometimes, the conduct of the key witnesses and responsible persons are found unusual or strange. Sometimes, absence of capacity to take immediate decision and to make follow up work, is the key cause. Merely because the defence is able to point out that there could have immediate prudent action in such fact situation, would not add any strength to the defence itself. The defence when intends to use any infirmity or lacuna as weapon to uproot the case of the prosecution, then how it would affect the strength of the case of the prosecution requires to be demonstrated. It is very likely that reading the body language of th bank employees, the accused may have left the Bank immediately after making discreet inquiry about the credit of the amount in the account and, therefore only,

he had not returned to the Bank on the next day or during subsequent working hours. The accused was on leave. So, it was possible for him to visit the Bank. Non-seizure of passbook from the accused is an important lacuna, but when the accused was intercepted for the first time is also a question because Mr. Lakhani was following him and he had paid visit at the so-called residence of the accused mentioned in the account opening form. Help of Mr. RM Dave and one Mr. Mahendra Patel was also sought. Of course, Mr. Piyush Vyas has said that he had handed over the passbook to the accused by putting credit entry of Rs.10 Lakh. So, the CBI could have recovered the passbook, but it appears that as the accused was not arrested immediately and interrogated thoroughly in early hours, the CBI could not seize the pass-book. Immediate action either by the Bank or by IT Department may have helped the prosecution in getting this important document and circumstance against the accused, but non-seizure of the paper-book of SB Account No.3863 is not a missing link because otherwise the chain is found complete. In my view, the ld. Trial Judge has rightly appreciated the evidence led by the prosecution and there is no material illegality in appreciating the evidence. Each judgment cited on behalf of the defence side has been considered and appreciated. Certain omissions ignored by the trial Court are found not in the nature of contradiction. The facts stated by

the witnesses in the cross-examination if are not brought to the notice vis-a-vis their previous statements before the CBI, can not be considered as contradiction on account of either improvement or omission.

38 Mr. DF Amin, of course has pointed out certain circumstances from the evidence led by the prosecution and lacuna left by the investigating agency that the accused only may not be the person behind the criminal wrong and he may have been made a scape-goat. If the Court finds even on available evidence that CBI could have filed chargesheet convincingly and successfully not only against the present accused but also against Mr. RM Dave and Mr. Chetan Patel posing both of them as co-conspirators and/or abettors, then the accused should be given benefit on the ground that the prosecution was unfair to the accused. But I am not convinced that the accused should be given advantage of such arguments. The Court is presently evaluating the legality and validity of the judgment under challenge. The Court is supposed to scrutinize the judgment and its strength in the background of the basic case of the prosecution and the evidence led to prove the charge. The say of Mr. Amin shows only strong probability of involvement of Mr. Dave and Mr. Chetan Patel, but it would be difficult for the Court to comment on this part especially when they are not before the Court. It may result into serious

prejudice to both these witnesses. If the CBI would have chargesheeted both these persons, then they could not have examined as competent witnesses in the trial against the accused. But merely on this logic, their version can not be ignored. The only duty of the Court in such a fact situation is to see that their say before the Court gets some convincing support from other independent evidence or not. Here in the present case, such support is available. The evidence of Mr. HD Parmar, Mr.Jambusaria and Mr. AA Pathan is sufficient to link the accused with the offence of forgery i.e. creation of forged IT Refund voucher and IT Advice and the evidence of Mr. Piyush Vyas as well as Mr. Natvar Patel -Asstt. Manager, also is found sufficient to link the accused with the fictitious account opened in the name of Mr. JR Vyas. Mr.Amin had argued that during the course of cross-examination, witnesses have stated before the Court for the first time that they could have told to the investigating agency and, therefore, the same should be considered as material improvement or omission while appreciating the oral evidence of a particular witness. This type of omission can be equated with contradiction is the settled law. On the contrary, the Court can legally and reasonably consider such facts stated by the prosecution witnesses as evidence that has come on record at the instance of the accused. Therefore, it is rightly said that sometimes risky questions or fishing

propositions bring some crucial evidence on record that may ultimately go against accused.

39. It is true that while linking the accused with the crime and to get link established inter-se between the circumstances proved by the prosecution, the opinion of the handwriting expert has weighed with the Court and, therefore only, Mr. Amin has hammered one point that in the present case, the trial Court ought not to have accepted the opinion evidence as evidence favourable to the prosecution. The expert has accepted in plain terms that he is not able to express any opinion except qua the questioned documents vide Q.2, Q.5, Q.8, Q.1/1, Q.10 to Q.18, meaning thereby that it was not possible for the expert to fix authorship of the rest of the items on the basis of the material on hand. The opinion is at Exh.73. Questionnaire sent to the expert with annexures is at Exh.72. 10 questions were framed and 18 documents were sent for analysis and examination along with admitted writing, signatures and figures of accused i.e. four documents and four files containing the specimen handwriting, signatures, figures taken in presence of two witnesses. Those documents are referred in the opinion viz. (i) S.1 to 31, (ii) S.32 to 56, (ii) S.55 to 61 and (iv) S.62 to 69. The reasons forming the opinion are at exh.74. The cross-examination of the handwriting expert is mainly based on the reasons for opinion embodied in

para- 1 & 2 of the opinion expressed which affirmatively links the handwriting, signature or figures in the questioned documents with other documents i.e. specimen as well as undisputed writings of the accused. Having considered the reasons assigned by the expert, it is clear that the expert has kept in mind the basic principles of handwriting science while forming the opinion. Of course, the expert in his cross-examination has not shown agreement with the proposition placed before him from the book by AS Osborn (2nd Edition). The following propositions were placed before the expert by the defence counsel:-

(i) The most important reason for making photographs of a disputed document is that by this means the writing in question can be accurately enlarged so that every quality and characteristic of it can be clearly and properly interpreted whether the facts so shown point to genuineness or to forgery. (Page-531 of the paper-book).

(ii) Another purpose in photographing a document is to provide any number of accurate reproduction of it, thus affording unlimited opportunity for study, comparison and investigation by any number of examiners, which would not be possible by using the original paper alone. (Pate-531 of the paper-book).

(iii) Except in the case of those specially skilled, the eye is unable to carry from one page to another or even a few inches, unfamiliar from or color impression, and but few observers are able to properly to note even the most conspicuous resemblances or differences in small objects that cannot be examined close together. Objects that are actually different apparently differ

more greatly the closer together they are placed; or, if similar, appear to be more alike as they are brought close together. (Page-531 of the paper-book).

(iv) Enlarged photographs of this kind sometimes are absolutely conclusive as evidence. (Page-531 of the paper-book).

(v) Illustrations are desirable for several purposes; first, to show hesitation, tremor, inequalities in pen pressure, stops, retouching, and that line quality in general which points to a simulated instead of a writing movement, as is well illustrated in Figures 186 and 187. With large and accurate photographs showing these conditions the inherently suspicious character of a traced signature can usually be clearly seen. The second purpose to be served by photographs is to show suspicious identity, or proximate identity of a disputed signature and an alleged model, or to show identity of a number of disputed signatures all of the same illicit parentage. (Page-533 of the paper-book.)

(vi) A large proportion of the photographs desirable for the adequate illustration of these various questions are of a size larger than the pages of this book, ranging in most cases from 8 by 10 to 11 by 14 inches. They should be made in a manner that will show the utmost detail of every part, and it is impracticable to illustrate the various questions in the most effective manner on the small pages of this book by any available process. The accompanying illustrations in this and other chapters only suggest what is possible when space and method are not restricted. In considering many of these matters the only entrance to the mind of one who is to decide the case is through the eye. In every case this question should be considered in all phases and an economy that limits this part of preparation may invite defeat. (Page-533 of the paper-book.)

(vii) When an enlarged photograph of a

forgery, whether it be simulated or traced, is compared with a similarly enlarged photograph of the genuine signature, it becomes patent that there is a world of difference between the two signatures in spite of the general similarity in their appearance, for it is only when they are magnified several diameters that the details of the construction of any signature can be appreciated by the naked eye. (Page-533 of the paper-book.)

(viii) As the evidence on the documents is being unfolded, certain features of the handwriting or typescript illustrated i n the photographs have to be brought to the attention of the court whilst their significance is being explained. (Page-533 of the paper-book.)

(ix) As is pointed out in some detail in the chapter on forged signatures, the use of the ball-point pen marks the detection of forgery much less certain, for here the finest details of handwriting signature are all-important. (Page-535 of the paper-book.)

(x) On the other hand, a blunt pencil will defeat the efforts of the most skilled to include either shading or fine detail in the construction of the letters. The limit is reached when a ball-point pen is used; this implement has all the faults of the blunt pencil together with others peculiar to itself. (Page-535 of the paper-book.)

(xi) A rotating ball is hardly the instrument of choice for the reproduction of the finer details of the letter design, and to add to this failing, the ball-point adds curious abrupt circular thickenings to the line when swept around a narrow curve. (Page-535 of the paper-book.)

(xii) This is nearly always the fact where it is sought to show that a forged signature containing only a few letters was written
by a certain writer. This is one of the

most frequent of disputed document problems that is presented and it is seldom that the question can be answered because there is not enough evidence upon which to base an answer. (Page-549 of the paper-book).

(xiii) This intense fixing of the attention on the matter and the process of writing makes it extremely difficult to write even one's own hand in a free and natural manner, and under these self-conscious conditions to be required to imitate successfully the writing of another is a task of very great difficulty. (Page-551 of the paper-book.)

(xiv) It will be shown that while it is often possible to express and justify a definite opinion as to whether a signature is genuine or forged, it is rarely that the identity of the forger can be established by comparing the handwriting of the forgery with specimens of the handwriting of suspects. (Page-551 of the paper-book.)

(xv) If the questioned signatures have been written with a ball-point pen they can be compared quite satisfactorily with genuine signatures written with a conventional form of pen, but not always vice versa. (Page-551 of the paper-book.)

(xv) Even if a person is quite willing to give specimens of his handwriting on request, the question can be asked whether any reliance dare be placed on these being in every respect natural writings. Even if the person concerned has a clear conscience, there is the possibility that the unnatural circumstances, or perhaps the uniqueness of the occasion will cause him, albeit unwittingly, to modify his handwriting. Where signatures are concerned, it is very unlikely that he will dash off his signature as he usually does when signing documents in the ordinary way of business, he is far more likely to take care to write signatures which are as legible, or perhaps as impressive, as he can make them.

By showing the book during the course of cross-examination of this witness PW 18 Mr. Sureshchandra Lohia (exh.71), he was also shown figure “205” relating to common similarity in writing, the word “and” by 14 different writers which is at page 549 of the paper-book (exh.71). But in the present case, the ld. Trial Judge of course has not considered the opinion which can be viewed with the doubt on account of proposed common similarities in writing. No error has been successfully pointed out to this witness PW Sureshchandra whether he had ignored the accepted principles of the handwriting examination science. The expert had seen and examined the documents by magnifying each document to its maximum. It does not emerge from record that the accused had ever requested the trial Court prior to examining PW 18 Mr. Lohia that he may be given enlarged photographs if taken by the expert of the documents under scrutiny. Earlier, such latest technology was not available and, therefore, the Courts were insisting on production of the magnifying photographs of the questioned document along with relevant specimen or undisputed writing. Merely because the investigating officer has insisted to copy out the questioned documents several times and while copying out the questioned documents if IO finds that either the accused or the suspect is avoiding something, then he can positively insist to copy out religiously the

questioned document as it is. So, even for the sake of arguments it is accepted that IO has insisted to put a dot on the letter “j” as it was there in the questioned document, would not make the specimen writing not worthy of comparison. On the contrary, it appears that the investigating agency had taken all the care while taking specimen handwriting from all the persons including Mr. HD Parmar and Mr. BK Shah- once suspects. It is not necessary to comment as to what type of situation would affect the handwriting; mental, physical or even environmental. The expert is given, therefore, number of specimen writings so that close scrutiny of questioned document can be made on the date scientifically collected. Any disputed writings that are found sufficient to link the accused with the crime, there is no need to go into the proposition made to the expert in reference to the specimen writing. Ultimately, the opinion of a co-employees is already available who can legitimately claim that they were acquainted with the handwritings of the accused and that part of evidence has been rightly appreciated by the trial Court. So, the ld. Trial Judge could have safely used the opinion evidence as corroborative piece of evidence. On the contrary, it is possible to observe that in the present case, even on the strength of the opinion evidence, the Court could have inferred legitimately that the allegations made by the prosecution has substance that at least the present

accused was a party in forging the document mainly the Income-tax refund voucher and Income-tax Advice and he is the person who has signed as Mr. JR Vyas at the time of opening the bank account. This is a case where two sets of strong pieces of evidence are there and both the sets corroborate each other. So, the arguments advanced by Mr. Amin on this point, are not found acceptable. On the contrary, the observations mad by the Apex Court relied on by Mr. Ravani, ld. Counsel appearing for CBI in the case of **Bhagwan Das & Another v/s State of Rajasthan, 1957 SC 589** and in the case of **State of M.P. V/s Sanjay Rai, (2004)10 SCC 570,** would help the prosecution. Relevant para-13 of the decision is already reproduced in forgoing paras of this judgment. However, in the decision in the case of **State of M.P. V/s Sanjay Rai, (supra),** the Apex Court was dealing with th case based on circumstantial evidence and opinion evidence was one of the main aspect under consideration. The only circumstance on which the trial Court had relied to hold the accused guilty was based on reference to some text-book on criminal jurisprudence. The Apex Court, in para-17 of the judgment, has said that :-

> “17. It cannot be said that the opinions of these authors were given in regard to the circumstances exactly similar to those which arose in the case now before us nor is this a satisfactory way of dealing with or disposing of the evidence of an expert examined in this

> case unless the passages which are sought to be relied to discredit his opinion are put to him. This Court in ***Sunderlal v. state of M.P.*** Disapproved of judges drawing conclusions adverse to the accused by relying upon such passages in the absence of their being put to medical witnesses. Similar view was expressed in ***Bhagwan Das v. State of Rajasthan.*** Though opinion expressed in textbooks by specialist authors may be of considerable assistance and importance for the Court in arriving at the truth, they can not always be treated or viewed to be either conclusive or final las to what such author says to deprive even a court of law, to come to an appropriate conclusion of its own on the peculiar facts proved in a given case. In substance, though such views may have persuasive value, they can not always be considered to be authoritatively binding, even to dispense with the actual proof otherwise reasonably required of the guilt of the accused in a given case. Such opinions can not be elevated to or placed on a higher pedestal than the opinion of an expert examined in Court and the weight ordinarily to which it may be entitled to or deserves to be given." (Emphasis supplied for the purpose of present judgment)

Ratio of this decision, positively would help the prosecution because here the appellant intends to take an advantage of some opinion expressed by the expert in the book and had submitted that the evidence of expert examined should be ignored. It is true that the Handwriting Expert has considered certain letters and figures in forming the opinion and the same have been pointed out by Mr. Amin mainly from the undisputed documents and English writing. The expert has mainly concentrated on figures "6", "3", "8", "2" and letters "es"m "bs", "se", "as", "ars" and "has", but while considering the characteristic of similarity,

dissimilarity automatically gets taken care of.

40. PW 18 Mr. Suresh Lohia- handwriting expert has examined specimen writings as well as admitted writings of accused Mr. AS Parmar in reference to the questioned documents Q.1, Q.1/1, Q.2 & Q.3 in exh.30, Q.4 to Q.6 in exh.31, Q.7 to Q.9 in exh.32,Q.10, Q.11 and .13 in exh.33, Q.14 & Q.15 in exh.34 and Q.16 to Q.18 in Exh.35. Q.33 to Q.35 are the documents received and seized from the Bank. Admitting writings of the accused are on record vide exh.36 & 37. The expert had considered specimen signature of Mr. BK Shah sent as specimen writing in A-57 to 61 (exh.20) and signature of Mr. BK Shah i.e. A-7 & A-8 in exh.21. Specimen writings of Mr. HD Parmar as well as admitted writings were also before the expert as S-6 to S.69, A-9 & A-10 (exh.22 & 23). Specimen writing of Mr. RM Dave and his admitting writings were also sent and they were examined by this witness which are at exh.24 & 25. So, it is difficult for this Court to accept that before cornering the present accused, the CBI has not cared to clear the shadow of doubt at least qua the persons involved in forging the questioned documents. Opinion expressed by this witness in para-3 of his deposition, in my view, is sufficient to link the accused qua the questioned documents when other oral evidence is already available on record. On one point of time, the defence counsel has tried to assail

the competence of the expert qua his opinion expressed on the documents written in vernacular Gujarati, but the expert has answered all these questions efficiently. The Court is of the view that it is not necessary to have adequate knowledge of the language while examining the handwriting because the opinion of handwriting expert is based on the science and mainly this science deals with various aspects which are significantly different and has no much relevance to the knowledge of a language. Similarity or dissimilarity of the characteristic of various nature is the determining factor. But in the present case, the witness has categorically stated that he knows Gujarati and when he was asked to write something in Gujarati during the course of cross-examination (exh.11 of the deposition), he has successfully written his full name in vernacular Gujarati and that was received in evidence as exh.72. So, it is difficult for the Court to ignore the evidence of an experienced person like the witness examined. There was no reason for this witness not to implicate either Mr. HD Parmar, or Mr. BK Shah or Mr. RM Dave if they had really participated in forging any of the questioned documents. So, it is not possible to argue that this is a case of cursory examination of English handwriting, may be in haste, or under the pressure of CBI. This argument is not convincing and is, therefore, not acceptable.

41. Of course, some comments have been made in forgoing paras of this judgment and the Court has commented on the role and scope of involvement of Mr. RM Dave and Mr. Chetan Patel and so the same need not be repeated here. But certain lacunas pointed out by Mr. Amin which apparently look relevant, need redressal because it is known principle that “justice not only should be done, but it should also appears to have been done”. Role of CBI in the investigation while prosecuting the case is not found transparent as expected, is the allegation. It is not possible for the Court to ignore or brush aside this submission as such elements have been pointed out by Mr. Amin. The list of infirmities/ lacunas of course is not exhaustive and the same be seen only as illustrative. But it is clear that:-

(A) CBI ought to have recovered the pass-book allegedly handed over to the accused. The Banks are maintaining and issuing the pass-book with printed serial numbers and each ledger account normally contains number of the passbook issued to the account holder. If the duplicate pass-book is issued, then specific endorsement is made on the pass-book that the pass-book issued is a duplicate pass-book. This practice is being followed by all the Banks uniformally in the country.

Whether really a pass-book was issued, then the same was of which number and that number falls as per the serial numbers of the stationery available with the Bank? So, the say of PW Chetan Patel was required to be cross-checked whether his version of issuance of the pass-book and having conversation with the accused would have got strength by the best available evidence? The prosecution is supposed to lead, collect and produce the best evidence.

(B) Mr. RM Dave was examined at a latter stage. Prior to that, the deposition of Branch Manager Mr. Lakhani was already on record. Extra judicial confession is an important and crucial piece of evidence. Mr. RM Dave if he had really stated anything about the extra-judicial confession made by the accused in his statement before CBI, then why he was not confronted by CBI Prosecutor and when he has not stated so in the earlier statement, then why CBI had not attempted to record his further statement in the background of the facts stated by the Branch Manager Mr. Lakhani qua the extra-judicial confession? It is also the practice of CBI to call two witnesses simultaneously if they are

contradicting each other so that true version comes out and the investigating agency can get more clue in the matter. Nothing has been done perhaps in the present case and, therefore, only the trial Court was compelled to observe that there is no substance in the evidence as to the admission made by the accused in such a sensitive case. Income-tax Department is a very important department so far as the direct taxes are concerned and in all cases where the attempt to defraud the department has been made by its own employee, then the investigation and prosecution should be of maximum vigilance. This was not the case of only filing or non-filing of the income-tax return or filing of false income-tax return or paying less tax than the actual tax shown in tax paying challan.

(C) Who was first person to discover the attempt made to defraud in the present case, was also a question because PW Mr. Lakhani claims that he was the first person who suspected something in the evening of 10.09.1986 and, therefore, he suo motu started inquiry and visited the bungalow in Karnavati Society, Usmanpura, Ahmedabad. It is the say of the Vigilance cell of the Income-tax Department

that they had some clue and, therefore, the Bank was informed not to make payment against IT Refund voucher of Rs.10 Lakh and thereafter one officer from the IT Department had visited the Bank. It is in evidence that under the powers vested with the IT Department, crucial documents from the Bank were seized. Prior to the seizure of these documents, the Bank has not cared to lodge a complaint and no formal complaint was lodged even after the seizure of the documents by the Income-tax Department.

(D) CBI was not supposed to disclose the name of the informant because the complaint is registered by the CBI itself on information received, but there is nothing on record to show that CBI had ever made any attempt to ascertain whether the informant himself is one of the guilty persons involved in the crime because it is the experience that sometimes, one of the culprits apprehending dire consequences, poses himself to be an innocent person and assumes the role of an informant. IO has not said in his deposition on this aspect stating that he did undertake this exercise.

(E) The accused named in the chargesheet were not arrested or interrogated immediately and Mr. RM Dave even after statement of Mr. Chetan Patel before CBI was not shown as one of the suspects.

(F) When the IO was satisfied that Mr. BK Shah and Mr. HD Parmar are the victims and they are wrongly named in the FIR, then formal report under section 169 of CrPC whether was required to be submitted, is the question because on filing of such report, the person accused has a chance to resist the report.

42. It is possible to point out certain other lacunas, but the court does not find it necessary as the lacunas not of substantive nature. Appreciating the aspects pointed out by Mr. Amin, the Court is of the view that CBI may have thought to minimize the list of culprits or may have felt that this is not a case of conspiracy hatched in advance. It is an experience that sometimes the complainant or the prosecuting agency is tempted to involve more persons than the real culprits, but at the trial, they would wrongly involve the persons and get advantage of theory of elimination. In the same way, either the complainant or the investigating agency in a given fact situation also attempts to minimize the list of culprits. This tendency is found prominent when

accused persons belong to certain creamy layer of society or they are in the class falling in government or semi-government employees. In the present case, CBI has made any attempt to minimize the list of culprits who could have been chargesheeted is a question, but when the answer is either “may be” or “may not be”, the situation would not tilt in favour of the accused. The other lacunas have been discussed by the ld. Trial Judge while accepting the case of the prosecution, even collectively, in light of the discussion made above, is not found fatal to the case of the prosecution. So, the aspects referred to above would not help the case of the prosecution.

43. One submission or Mr. Amin is based on the language of sub-clause (d) of sub-section (i) of section 5 of the Old Act. It is submitted that there is no proof in respect that the accused by corrupt or illegal means or by otherwise abusing his position as a public servant obtained for himself any valuable thing or pecuniary advantage. As the accused had not obtained anything for himself and tearing out the blank page; one from the refund voucher book and other one from advice book; cannot be said to be a valuable thing or any pecuniary advantage. So, it would not fall under clause (d) of section 5(i) of the Old Act which is made punishable under section 5(2) of the Old Act. This argument has neither any legal force nor any logic. It is the say of

the prosecution and the evidence led that the accused was UDC in the Income-tax Department and the accused had access to these two valuable documents or documents which can be converted into valuable security because he was occupying the chair as UDC in a room wherein in one of the cupboards, these documents were being kept. These documents were valuable for department point of view and it was again valuable to the person who can make use of it or himself use it. The parent section 5 of the Old Act simply defines and describes the various misconducts of a public servant which are made punishable under sub-section (2) of section 5 of the Old Act irrespective of the offence punishable under section 161 of IPC. In the same way, I do not find any substance in the arguments that the provisions of section 467 of IPC would not be attracted. According to Mr. Amin, even for the sake of arguments it is accepted that some handwriting on the income-tax refund voucher and advice (exh.34 & 35) are of the accused, even then, it can not be said that the accused had forged a valuable security. Forging a document is much lighter offence which is made punishable under section 465 of IPC. For that accused was not charged. But as discussed earlier, advice that was sent to RBI was a key for getting IT refund voucher cleared and refund voucher itself was practically a cheque or an instrument and against its tender, a person named in the voucher would receive th amount equal to the

amount mentioned in the voucher. Such refund voucher is a pay order in favour of the person named in it. So, forgery of such document is nothing but forgery of a valuable security and when it is inferable from the evidence that forgery was for the purpose of cheating the IT Department and in turn RBI and the same was used as genuine knowing it to be false when the same was tendered in Ellisbridge Co.Op.Bank, it would be difficult for the Court to accept that the accused has been wrongly linked with these offences. So, these arguments are also negatived. I do not think necessary to refer any decisions and it is sufficient for the Court to observe that the ld. Trial Judge has not committed any error in convicting the accused for the offences with which they are charged.

44. For short, there is no merits in the appeal so far as order of conviction recorded by the ld. Trial Judge is concerned and the same requires to be dismissed.

45. So far as sentence is concerned, Mr. Ravani, ld. Counsel appearing for the CBI as well as Mr. AJ Desai, ld. APP for the State, have submitted that in the present case, the Court should not reduce the punishment though submitted by ld. Counsel Mr. Amin for the appellant because the offence is grave and same has been committed by an employee of the Income-tax Department which is concerned with the direct flow of the State

revenue and, therefore, the attempt made by the accused should be viewed seriously.

46. However, the submission made by Mr. DF Amin, ld. Counsel appearing for the appellant accused for reduction in sentence, has some force. It is true that the accused was a responsible employee of Govt. of India. However, he is facing agony and mental tress since years. He has been terminated on account of the conviction recorded by the trial Court way back in the year 1988 and for the offence punishable under section 5(1)(d) R/w section 5(2) of the Prevention of Corruption Act (Old Act), no minimum punishment was prescribed. When no actual loss has been caused to the State, the ld. Trial Judge ought to have inflicted the lesser punishment. At least, this Court should reduce the period of substantive sentence. As this Court has negatived the arguments of Mr. Amin that the accused is not responsible for criminal misconduct or for forging valuable security, it would not be possible for this Court to impose a very light punishment because the order of punishment should carry the effective message to the society and there should be an element of some deterrence. The view should not be very liberal in such or similar cases. To some extent, the period of substantive sentence can be reduced. I am of the view that if substantive sentence is reduced to that of R/I for 9 months for the offences for which the appellant

accused is convicted, would meet the ends of justice. However, sentence of fine awarded in respect of the aforesaid offences also requires to be confirmed as the amount of fine has already been paid.

47. In the result, the present Criminal Appeal is partly allowed. The impugned judgment and order of sentence passed against the appellant accused for the offences punishable under sections 420, 467, 468 read with section 471 of the Indian Penal code and also under section 5(2) read with section 5(i)(d) of the Prevention of Corruption Act (Old Act) is hereby confirmed. The sentence of fine imposed for the aforesaid offences is also hereby confirmed. However, the order of substantive sentence imposed in respect of aforesaid offences is reduced to the effect that so far as the offences punishable under sections 420, 467, 468 read with section 471 of the Indian Penal code are concerned, instead of the substantive sentence to undergo R/I for 1 ½ years imposed for each offence, the same is reduced and the appellant accused now shall undergo R/I for 9 months for each of the offences. Similarly,so far as the offence punishable under section 5(i)(d) R/w Section 5(2) of the Prevention of Corruption Act (Old Act) is concerned, instead of the substantive sentence to undergo R/I for 1 ½ years imposed for the said offence, the same is reduced and the appellant accused now shall undergo R/I for 9 months for

the said offence. Sentence of Fine imposed in respect of aforesaid each offence, is hereby confirmed. Substantive sentences imposed shall run concurrently.

48. The appellant accused was on bail pending trial and at present also the appellant accused is enjoying bail in view of the order passed by this Court on 27.09.1988 and, therefore, appellant accused should be given some reasonable time to surrender. The appellant accused, therefore, is directed to surrender himself within six weeks from the date of this judgment before the trial Court to serve out the sentence, failing which the trial Court shall issue Non-Bailable Warrant to secure the presence of the accused so that he can be sent to jail to serve the sentence. Bail Bonds of the accused stand discharged.

[C.K. BUCH,J]

*rawal